111-440

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 281.

THE CORN EXCHANGE NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

EMILE SCHEPPERS, FRANCOIS SCHEPPERS AND EDOUARD SCHEPPERS, COPARTNERS, TRADING AS SCHEPPERS BROTHERS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED AUGUST 27, 1881.

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1 UNITED STATES,
Eastern district of Pennsylvania, } *scl.*

The President of the United States to the judges of the Circuit Court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between the Corn Exchange National Bank, plaintiff, and Emile Scheppers, Francois Scheppers, and Edouard Scheppers, copartners trading as Scheppers Brothers, defendants, in a plea of trespass on the case, a manifest error has intervened to the great damage of the said the Corn Exchange National Bank, as in its complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf: You are hereby commanded that if judgment thereof be given, then under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, chief justice of the Supreme Court of the United States, at Philadelphia, this twentieth day of July, A. D. one thousand eight hundred and eighty-one, and in the one hundred and sixth year of the independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss.*

To Emile Scheppers and Edouard Scheppers, sued with Francois Scheppers, copartners trading as Scheppers Brothers, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein the Corn Exchange National Bank is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this thirtieth day of July, in the year of our Lord one thousand eight hundred and eighty-one.

WM. BUTLER,
Judge.

We hereby accept service of the above citation on behalf of Emile Scheppers and Edouard Scheppers, of defendants in error.

July 30th, 1881. MORGAN & LEWIS.
July 30th, 1881. JOHN G. JOHNSON,
Per F. D. L.

3 In the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

The Corn Exchange National Bank
vs.
Emile Scheppers, Francois Scheppers and Edouard Scheppers, copartners trading as Scheppers Brothers. } October session 1880, No. 11.

UNITED STATES OF AMERICA, *Eastern district of Pennsylvania*, } *ss.*

Pleas and proceedings before the honorable the judges of the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session 1880, No. 11.

It is thus contained:

Be it remembered that on the second day of October, A. D. 1880, the Corn Exchange National Bank, by its attorney, Nathan H. Sharpless, esquire, comes into court here and sues forth therefrom a writ of summons against Emile Scheppers, Francois Scheppers, and Edouard Scheppers, copartners trading as Scheppers Brothers, which with the endorsement and return thereto is in the words and figures following, to wit:

4 UNITED STATES, *Eastern district of Pennsylvania*, } *sct.*

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

We command you, that you summon Emile Scheppers, Francois Scheppers and Edouard Scheppers, copartners trading as Scheppers Brothers, late of your district, if they may be found therein, so that they be and appear before the judges of the Circuit Court of the United States in and for the eastern district of Pennsylvania, of the third circuit, at a session of the same court to be holden at Philadelphia on the first Monday of October instant, to answer to the Corn Exchange National Bank in a plea of trespass on the case. And have you then there this writ.

Witness the Honorable Morrison R. Waite, chief justice of the Supreme Court of the United States, at Philadelphia, this second day of October, A. D. 1880, and in the 105th year of the independence of the United States.

(Signed) SAMUEL BELL,
Clerk of Circuit Court, U. S.

4½ We accept service of the within writ for Emile Scheppers and Edouard Scheppers, and request the clerk to enter our appearance for them.

(Signed) MORGAN & LEWIS.

3D OCTOBER, 1880.

Service accepted as above for Emile Scheppers and Edouard Scheppers, and nihil habet as to Francois Scheppers. So answers

JAMES N. KERNS,
U. S. Marshal,
Per C. McCORMICK,
Deputy.

(Indorsed:) No. 11; Circuit Court, October session, 1880; The Corn Exchange National Bank *vs.* Scheppers et al.; summons; case; returnable on the first Monday of October inst.; N. H. Sharpless, attorney for plaintiff; returned & filed October 31, 1880.

5 And thereupon afterwards, to wit, on the 9th day of October, A. D. 1880, the plaintiff, by its attorney, comes into court here and files copy of instruments on which plaintiff's claim is founded, which, being read, is as follows, to wit:

C. C. U. S., e. d. Pa., Oct'r sess., 1880.

Corn Exchange National Bank
vs.
Scheppers Brothers. } No. 11.

Copy of five promissory notes on which suit is brought, to wit:

$3,300.00. PHILADELPHIA, *March* 12*th*, 1875.

Forty-two months after date we promise to pay to the order of ourselves thirty-three hundred dollars at Corn Exchange N't'l Bank, Philad'a, without defalcation. Value received. No. 2252. Due Sept. 15th, 1878.

(Signed) SCHEPPERS BROTHERS.

(Endorsed:) Scheppers Brothers.

6 (Endorsed on face:) Coupon bonds of Scheppers Brothers for an equivalent amount deposited with the holder of this note as collateral, said coupon bonds to be returned to Scheppers Bros. on payment of this note.

$2,200. PHILADELPHIA, *March* 12*th*, 1875.

Forty-two months after date we promise to pay to the order of ourselves twenty-two hundred dollars at Corn Exchange N't'l Bank, Philad'a, without defalcation. Value received. No. 2270. Due Sept. 15th, 1878.

(Signed) SCHEPPERS BROTHERS.

(Endorsed:) Scheppers Brothers.

7 (Endorsed on face:) Coupon bonds of Scheppers Brothers, for an equivalent amount deposited with the holder of this note as collateral, said coupon bonds to be returned to Scheppers Bros. on payment of this note.

$3,200. PHILADELPHIA, *March 12th*, 1875.

Fifty-four months after date we promise to pay to the order of ourselves thirty-two hundred dollars, at Corn Exchange Nat'l Bank, Philad'a, without defalcation. Value received. No. 2263. Due Sept. 15, 1879.

(Signed) SCHEPPERS BROTHERS.

(Endorsed:) Scheppers Brothers.

(Endorsd on face:) Coupon bonds of Scheppers Brothers for an equivalent amount deposited with the holder of this note as collateral, said coupon bonds to be returned to Scheppers Bros. on payment of this note.

8 $2,300.00. PHILADELPHIA, *March 12th*, 1875.

Fifty-four months after date we promise to pay to the order of ourselves, twenty-three hundred dollars, at Corn Exchange N't'l Bank, Philad'a, without defalcation. Value received.

No. 2271. Due Sept. 15th, 1879.

(Signed) SCHEPPERS BROTHERS.

(Endorsed:) Scheppers Brothers.

(Endorsed on face:) Coupon bonds of Scheppers Brothers for an equivalent amount deposited with the holder of this note as collateral, said coupon bonds to be returned to Scheppers Bros. at payment of this note.

$1,000.00. PHILADELPHIA, *March 12th*, 1875.

Sixty-six months after date we promise to pay to the order of ourselves one thousand dollars at Corn Exchange N't'l Bank, Philad'a, without defalcation. Valne received.

No. 2272. Due Sept. 12–15, 1880.

(Signed) SCHEPPERS BROTHERS.

(Endorsed:) Scheppers Brothers.

9 (Endorsed on face:) Coupon bonds of Scheppers Brothers for an equivalent amount deposited with the holder of this note as collateral, said coupon bonds to be surrendered to Scheppers Brothers on payment of this note.

Plaintiffs' Averment.

And the said plaintiffs aver that they now have in their possession, ready to produce to the court, the coupon bonds and every of

them mentioned in the memorandum on the face of the five promissory notes copies of which appear hereinbefore.

(Signed) N. H. SHARPLESS,
Pl'ff's' Att'y.

(Endorsed:) 11; October sess. 1880; C. C. U. S., e. d. Pa.; Corn Exchange National Bank *vs.* Scheppers Brothers; copies of five promissory notes on which suit is brought, and plaintiffs' averment; filed October 9, 1880; Sharpless.

10 And thereupon afterwards, to wit, on the 22d day of October, A. D. 1880, the defendants, by their attorneys, Morgan and Lewis, come into court here and file their affidavit of defence, which, being read, is as follows, to wit:

U. S. C. C., e. d. Penna., October sess., 1880.

Corn Exchange National Bank
vs.
Emile Scheppers et al., trading as Scheppers Brothers. } No. 11.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, } *ss.*

EMILE SCHEPPERS, being duly sworn, doth depose and say: I am one of the defendants in the above suit. We have a just and legal defense to the whole of the plaintiff's demand therein of the following nature, to wit: The said promissory notes, copies of which have been filed in said suit, are the last of a series of renewals and extensions of seventeen promissory notes, all made by us to the order of Messrs. Benjamin Bullock's Sons for five thousand dollars ($5,000) each, as follows:

11 One note dated June 3, 1873, at six months.
Three notes dated June 7th, 1873, at six months.
One note dated June 9th, 1873, at six months.
One note dated August 11th, 1873, at five months.
One note dated July 21st, 1873, at six months.
One note dated August 4th, 1873, at six months.
One note dated August 8th, 1873, at six months.
Two notes dated August 11th, 1873, at six months.
Three notes dated August 22d, 1873, at six months.
One note dated August 25th, 1873, at six months.
One note dated July 28th, 1873, at six months.
And one note dated August 25th, 1873, at six months.

Of said notes, fifteen, or all except the two last named, were discounted by the plaintiff, at the instance of said Benjamin Bullock's Sons, as follows:

Note dated June 3rd, 1873, discounted on or about July 2, 1873, at 9 per ct.; proceeds	$4,802.50
Three notes dated June 7th, 1873, discounted on or about July 3rd, 1873, at 9 per ct.; proceeds	$14,396.25
Note dated June 9th, 1873, discounted on or about July 5th, 1873, at 9 per ct.; proceeds	$4,798.75
Note dated August 11th, 1873, discounted on or about August 9th, 1873, at 12 per ct.; proceeds	$4,735
Note dated July 21st, 1873, discounted on or about August 30th, 1873, at 12 per ct.; proceeds	$4,753.33
Note dated August 4th, 1873, discounted on or about September 1, 1873, at 12 per ct.; proceeds	$4,733.33
Note dated August 8th, 1873, discounted on or about September 5th, 1873, at 12 per ct.; proceeds	$4,733.33
Note dated August 11th, 1873, discounted on or about September 8th, 1873, at 12 per ct.; proceeds	$4,720.83
Note dated August 11th, 1873, discounted on or about September 13th, 1873, at 12 per ct.; proceeds	$4,741.67
Three notes dated August 22d, 1873, discounted on or about September 13th, 1873, at 12 per ct.; proceeds	$14,170
Note dated August 25th, 1873, discounted on or about September 29, 1873, at 12 per ct.; proceeds	$47.730
Total proceeds	$71,314.99

The total amount paid by said plaintiff upon the discount of said fifteen promissory notes was seventy-one thousand three hundred fourteen dollars and ninety-nine cents. The remaining two of said seventeen promissory notes, to wit, said note dated July 28th, 1873, at six months, and said note dated August 25th, 1873, at six months, were never discounted by said plaintiff, nor was any consideration whatever at any time given for them or either of them by said plaintiff or by any other party to said Benjamin Bullock's Sons, or said firm of Scheppers Brothers, or to any one whomsoever, nor were the said last mentioned notes or either of them ever pledged
13 in any way to said plaintiff or to or with any other person or party whatsoever. The said seventeen promissory notes were not paid at maturity, but were extended and renewed at the rate of seven per cent. per annum. Upon said renewals and extensions payments have been made to said plaintiff by us as follows:

1874, January	15th.	Paid cash	$8,483 90
1874, April	15th.	Paid cash	8,629 39
1874, June	15th.	Paid cash	8,727 99
1874, August	15th.	Paid cash	8,626 60
1874, October	15th.	Paid cash	8,925 21
1874, December	15th.	Paid cash	9,023 82
1875, March	15th.	Paid cash	2,300 26
1875, June	15th.	Paid cash	2,329 51

1875, September 15th.	Paid cash.....	$2,366 69
1875, September 15th.	Paid cash.....	962 50
1875, December 15th.	Paid cash.....	2,403 47
1876, March 15th.	Paid cash.....	962 50
1876, September 15th.	Paid cash.....	962 50
1876, September 15th.	Paid cash.....	5,500 00
1877, March 15th.	Paid cash.....	770 00
1877, September 15th.	Paid cash.....	770 00
1877, September 15th.	Paid cash.....	5,500 00
		$77,444 34

said payments by our firm amounting to the sum of seventy-seven thousand four hundred forty-four dollars and thirty-four cents.

14 In addition thereto, on the fifteen day of September, 1877, the said plaintiff received from the assigned estate of said firm of Benjamin Bullock's Sons, which firm was debtor to us on settlement of account, in payment of dividends upon said fifteen promissory notes the sum of four thousand five hundred dollars ($4,500), making as the total amount received by said plaintiff upon said fifteen promissory notes the sum of eighty-one thousand nine hundred forty-four dollars and thirty-four cents ($81,944.34). The said plaintiff discounted said fifteen promissory notes as hereinbefore mentioned, and set forth at a rate greater than that permitted by the United States banking act, to wit, the rate of discount limited by the laws of the commonwealth of Pennsylvania, or "one half of one per centum for thirty days," five of said notes being discounted by said plaintiff at the rate of nine (9) per centum per annum, and the remaining ten thereof being discounted by said plaintiff at the rate of twelve (12) per centum per annum; and we are ad-

15 vised that said plaintiff thereby forfeited all right to the amount of said discounts, or to any part thereof. And moreover the said plaintiff stipulated for and charged upon said extensions and renewals interest at the rate of seven per centum per annum as aforesaid, as we are advised. This rate of interest was greater than that permitted by law, and said plaintiff by charging and stipulating for the same as aforesaid did forfeit the right to any and all interest whatsoever upon said renewals and extensions, or any of them; so that all the payments to said plaintiff as above stated were made upon said principal sum of seventy-one thousand three hundred fourteen dollars and ninety-nine cents ($71,314.99), and nothing whatever is due by us to said plaintiff upon any of said promissory notes hereinbefore mentioned, or upon any of the said extensions and renewals thereof, including said promissory notes upon which this suit was brought, or upon any of the coupon bonds mentioned in the plaintiff's averment filed, or upon any account or in any man-

16 ner whatsoever. All of which I believe to be true, and expect to prove at the trial of the cause.

Sworn and subscribed before me this 22nd day of October, 1880.

(Signed) EMILE SCHEPPERS.

Note the word "fifteen" being first written over erasures in lines 16 and 20 of page 4.

(Signed) SAMUEL BELL,
[SEAL.] *U. S. Com'r.*

(Endorsed:) No. 11, October sess., 1880: U. S. C. C., e. d. of Penna.; Corn Exchange National Bank *vs.* Emile Scheppers et al., trading as Scheppers Brothers; affidavit of defence; filed October 22, 1880; Morgan & Lewis.

17 And thereupon afterwards, to wit, on the 24th day of February, A. D. 1881, the plaintiff by its attorney comes into court here and files his narr, which being read is as follows, to wit:

In the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

EASTERN DISTRICT OF PENNSYLVANIA, } *ss.*
City and county of Philadelphia, }

Emile Scheppers and Edward Scheppers, sued with one Francois Sheppers, as to whom the marshal has returned the writ of summons in this case nihil habet (the said Emile Scheppers, Edward Scheppers and Francois Scheppers being lately copartners in business under the name and style of Scheppers Brothers), were summoned to answer the Corn Exchange National Bank, a banking association established in the eastern district of Pennsylvania, in this circuit, under the act of Congress of the United States providing for national banking associations, entitled "An act to provide a national
18 currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved the third day of June, A. D. eighteen hundred and sixty-four (1864), and the supplements thereto, of a plea of trespass on the case upon promises.

And thereupon the said plaintiffs by Nathan H. Sharpless, their attorney, complains for that whereas the said defendants heretofore, to wit, on the twelfth day of March, A. D. eighteen hundred and seventy-five (1875), at, &c., aforesaid, made their certain promissory note in writing bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby then and there promised to pay in forty-two months after the date thereof to the order of themselves at the Corn Exchange National Bank, Philadelphia, the sum of twenty-two hundred dollars, without defalcation, for value received, and then and there, for value received, indorsed the said promissory note and delivered the same to the said plaintiffs, and which said promissory note became due and payable by the said defendants to the said plaintiffs before the commencement of this suit and was thereupon duly presented and shown for payment
19 according to the tenor and effect thereof, and which said payment in whole or in part the said defendants then neglected

and refused and thence hitherto have neglected and refused to make, to wit, at, &c., aforesaid, and the said plaintiffs aver that at the time of delivering to them the said promissory note as aforesaid the said defendants deposited with them their coupon bonds for an equivalent amount as collateral security for the payment thereof and stated the fact of such deposit upon the face of said promissory note, the said coupon bonds to be returned to the said defendants on the payment of said promissory note, and which said coupon bonds the said plaintiffs now hold and have at all times since the making thereof held and been ready and willing to return to the said defendants on payment of said promissory note, whereof the said defendants then had notice, to wit, at, &c., aforesaid.

20 And whereas also the said defendants heretofore, to wit, on the day and year aforesaid, at, &c., aforesaid, made their certain other promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby then and there promised to pay in forty-two months after date thereof, to the order of themselves, at the Corn Exchange National Bank, Philadelphia, the sum of thirty-three hundred dollars, without defalcation, for value received, and then and there for value received indorsed the said last-mentioned promissory note and delivered the same to the said plaintiffs and which said last-mentioned promissory became due and payable by the said defendants to the said plaintiffs before the commencement of this suit, and was thereupon duly presented and shown for payment according to the tenor and effect thereof, and which said payment in whole or in part the said defendants then neglected and refused and thence hitherto have refused and neglected to make, to wit, at, &c , aforesaid, and the said plaintiffs aver that at the time of delivering to them the said last-mentioned promissory note as aforesaid the said defendants

21 deposited with them their coupon bonds for an equivalent amount, as collateral security for the payment thereof, and stated the fact of such deposit upon the face of the said last-mentioned promissory note, the said coupon bonds to be returned to the said defendants on the payment of said last-mentioned promissory note, and which said coupon bonds the said plaintiffs now hold and have at all times since the making thereof held, and been ready and willing to return to the said defendants on payment of said last-mentioned promissory note, whereof the said defendants then had notice, to wit, at, &c., aforesaid.

22 And whereas also the said defendants heretofore, to wit, on the day and year aforesaid, at, &c., aforesaid, made their certain other promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby then and there promised to pay in fifty-four months after date thereof, to the order of themselves, at the Corn Exchange National Bank, Philadelphia, the sum of twenty-three hundred dollars, without defalcation, for value received, and then and there for value received indorsed the said last-mentioned promissory note and de-

livered the same to the said plaintiffs, and which said last-mentioned promissory note became due and payable by the said defendants to the said plaintiffs before the commencement of this suit, and was thereupon duly presented and shown for payment according to the tenor and effect thereof, and which said payment in whole or in part the said defendants then neglected and refused and thence hitherto have neglected and refused to make, to wit, at, &c., aforesaid, and the said plaintiffs aver that at the time of delivering to them the said last-mentioned promissory note as aforesaid the said defend-
23 ants deposited with them their coupon bonds for an equivalent amount as collateral security for the payment thereof, and stated the fact of such deposit upon the face of said last-mentioned promissory note, the said coupon bonds to be returned to the said defendants on the payment of said last-mentioned promissory note, and which said coupon bonds the said plaintiffs now hold and have at all times since the making thereof held, and been ready and willing to return to the said defendants on payment of said last-mentioned promissory note, whereof the said defendants then had notice, to wit, at, &c., aforesaid.

24 And whereas also the said defendants heretofore, to wit, on the day and year aforesaid, &c., at, aforesaid, made their certain other promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby then and there promised to pay in fifty-four months after the date thereof, to the order of themselves, at the Corn Exchange National Bank, Philadelphia, the sum of thirty-two hundred dollars, without defalcation, for value received, and then and there for value received indorsed the said last-mentioned promissory note, and delivered the same to the said plaintiff; and which said last-mentioned promissory note became due and payable by the said defendants to the plaintiffs before the commencement of this suit, and was thereupon duly presented and shown for payment according to the tenor and effect thereof, and which said payment, in whole or in part, the said defendants then neglected and refused, and thence hitherto have neglected and refused to make, to wit, at, &c., aforesaid; and the said plaintiffs aver that at the time of delivering to them the said last-mentioned promissory note as aforesaid, the said defendants deposited with them their coupon bonds for an equivalent
25 amount as collateral security for the payment thereof, and stated the fact of such deposit upon the face of said last-mentioned promissory note, the said coupon bonds to be returned to the said defendants on the payment of said last-mentioned promissory note, and which said coupon bonds the said plaintiffs now hold, and have at all times since the making thereof held and been ready and willing to return to the said defendants on payment of said last-mentioned promissory note, whereof the said defendants then had notice, to wit, at, &c., aforesaid.

26 And whereas also the said defendants heretofore, to wit, on the day and year aforesaid, at, &c., aforesaid, made their

certain other promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby then and there promised to pay in sixty-six months after date thereof to the order of themselves at the Corn Exchange National Bank, Philadelphia, the sum of one thousand dollars without defalcation for value received, and then and there for value received indorsed the said last-mentioned promissory note, and delivered the same to the said plaintiffs, and which said last-mentioned promissory note became due and payable by the said defendants to the said plaintiffs before the commencement of this suit, and was thereupon duly presented and shown for payment according to the tenor and effect thereof, and which said payment, in whole or in part, the said defendants then neglected and refused, and thence hitherto have neglected and refused to make, to wit, at, &c., aforesaid, and the said plaintiffs aver that at the time of delivering to them the said last-mentioned promissory note as aforesaid, the said defendants deposited with them their coupon bonds for an equivalent
27 amount as collateral security for the payment thereof, and stated the fact of such deposit upon the face of said last-mentioned promissory note, the said coupon bonds to be returned to the said defendants on the payment of the said last-mentioned promissory, and which said coupon bonds the said plaintiffs now hold, and have at all times since the making thereof held and been ready and willing to return to the said defendants on payment of said last-mentioned promissory note, whereof the said defendants then and there had notice, to wit, at, &c., aforesaid.

28 Wherefore, and by reason of the premises, the said defendants at and before the commencement of this suit became liable to the said plaintiffs, and being so liable promised the said plaintiffs to pay them the said several sums of money in the foregoing promissory notes and each of them particularly specified upon request.

Yet the said defendants, although ofter requested so to do, have not as yet paid the said several sums of money in the aforesaid promissory notes, or any of them specified, or any part thereof to the said plaintiffs, but have hitherto neglected and refused, and still neglect and refuse so to do.

To the damage of the said plaintiffs twenty thousand dollars ($20,000.00); and therefore they bring their suit, &c.

(Signed) NATHAN H. SHARPLESS,
Plaintiffs' Attorney.

(Endorsed:) 11; October sess. 1880; C. C. U. S., e. d. Pa.; the Corn Exchange National Bank *vs.* Scheppers Brothers; Narr. Enter rule on the defendants to plead in the above case in two weeks, a judgment; see reg. Sharpless, plff's' att'y. To Samuel Bell, clerk C. C. U. S., e. d. Pa. Filed February 24, 1881.

29 And thereupon afterwards, to wit, on the 9th day of March, A. D. 1881, the defendants by their attorneys filed their plea as follows, to wit:

U. S. C. C., e. d of Penna., October sessions, 1880.

The Corn Exchange National Bank
vs.
Emile Scheppers et al., trading, &c. } No. 11.

The said Emile Scheppers and Edward Scheppers plead—
1. Payment with leave.
2. Set off.

(Signed) MORGAN & LEWIS,
(") JOHN G. JOHNSON,
Of Counsel.

(Endorsed:) October session, 1880; No. 11; U. S. C. C., e. d. of Pa.; Corn Exchange National Bank *vs.* Emile Scheppers et al., trading, &c.; pleas. Filed March 9, 1881. Morgan & Lewis, John G. Johnson.

30 And thereupon afterwards, on the same day, to wit, the 9th day of March, A. D. 1881, the plaintiff by its attorney files its replications, which being read are as follows, to wit:

U. S. C. C., e. d. Pa., October sess., 1880.

The Corn Exchange National Bank
vs.
Emile Scheppers et al., trading, &c. } No. 11.

Replications.

And as to the pleas of the said Emile Scheppers and Edouard Scheppers by them above pleaded the said plaintiff replies:
As to the 1st plea "non solvent" and
" " " 2nd " "nil debit."

(Signed) SHARPLESS,
Att'y for Pl'ff.

March 9, 1884.

(Endorsed:) 11. October sess. 1880. C. C. U. S., e. d. of Pa. The Corn Exchange National Bank *vs.* Emile Scheppers et al., trading, &c. Replications to pleas of Emile Scheppers and Edouard Scheppers. Filed March 9, 1881. Sharpless.

31 And thereupon afterwards, to wit, on the 16th day of April, A. D. 1881, the defendants by their attorneys come into court here and file an additional plea, which being read is as follows, to wit:

C. C. U. S., Oct. sess., 1880.

Corn Exchange National Bank
vs.
Emile Scheppers et al., trading as Scheppers Bros. } No. 11.

The said Edward Scheppers and Emile Scheppers, defendants in the above suit, further plead non assumperunt.

(Signed) MORGAN & LEWIS,
JOHN G. JOHNSON,
For defendants Emile Scheppers and Edouard Scheppers.

(Endorsed:) U. S. C. C., Oct. '80. No. 11. Bank *vs.* Scheppers. Additional plea. Filed April 16, 1882. Morgan & Lewis, Johnson.

32 And thereupon it is ordered that a jury come to try the issue joined in this cause.

And thereupon afterwards, to wit, on the 21st day of April, A. D. 1881, came the parties aforesaid, and the jurors of the jury aforesaid being called came, to wit: 1, Mordecai D. Evans; 2, J. Wesley Supplee; 3, J. P. Durban Castle; 4, William Ayres; 5, Conrad O. Zimmerman; 6, Jacob L. Stadelman; 7, John Cather; 8, Henry Clay Snyder; 9, J. Shipley Newlin; 10, Moses T. Young; 11, Charles Shivers; 12, Jacob Pensinger, who are duly empanelled, returned chosen, tried and sworn or affirmed to speak the truth in the issue joined, &c.

33 And thereupon the court by the Honorable William Butler, charged the jury as follows, to wit:

Gentlemen of the jury: The Corn Exchange National Bank (plaintiff) exhibits five promissory notes, drawn by Scheppers Brothers, (defendants,) to their own order and regularly endorsed. A prima facie case is thus made out against the defendants so that if, nothing more appeared the plaintiff would be entitled to recover the amount of the notes—twelve thousand dollars.

In answer to this case, the defendants show that in 1873 they drew a very large number of promissory notes to the order of Benjamin Bullock's Sons, to whom they were delivered to be used in purchasing wool for the defendants' use, Bullock's Sons procuring the notes to be discounted and applying the proceeds to such purchases. Subsequently, Bullock's Sons, who were transacting business on their own account also, failed, having received a large amount of Schuppers Brothers' paper which they had not so procured to be discounted and applied to the purchase of wool, as it was their duty to do. The failure of Bullock's Sons so embarrassed Schep-
34 pers Brothers that they, being unable to meet their engagements, sought an extension of time from their creditors and obtained it. The Corn Exchange Bank, the plaintiff, was found to be the holder of $85,000 of the notes delivered to Bullock's Sons, and

the defendants (Scheppers Brothers), supposing that all these notes, 17 in number, which went to make up this sum, had been discounted for their (the defendants') use, (as was intended), executed new notes to the bank for the full amount. The new notes were subsequently extended also, and others taken in their stead, Scheppers Brothers reducing the indebtedness by payment as rapidly as they were able to do. In the settlement of Bullock's Sons' estate, it was discovered that two of the seventeen notes held by the Corn Exchange Bank, which Scheppers Brothers had renewed on the extension granted them, had not been discounted by the bank and the proceeds applied to the defendants' use, as they supposed when the renewals were executed. Subsequently, Scheppers Brothers paid to the plaintiff all the indebtedness referred to, except the five notes
35 here sued upon, which represented the amount embraced in the two notes not discounted.

Thus far there is no dispute about the facts, nor is there any dispute about the law applicable to them. Bullock's Sons had no right to use the notes received from Scheppers Brothers for any other purpose than the purchase of wool, or to procure them to be discounted, so that the proceeds might be applied to this object. Nevertheless, the notes were so drawn as to constitute commercial or negotiable paper, so that if Bullock's Sons, in disregard of their duty, transferred them to another for their (Bullock's Sons') own use, the transferee, having no notice of the fraud, would possess a good title and could recover upon the notes. If, therefore, Bullock's Sons transferred the two notes before referred to to the Corn Exchange Bank in the course of their business with it, the bank thus acquired title, and may recover upon them. Being in the bank's possession, properly endorsed, the presumption is that the notes were so
36 transferred to it in the course of business; and if the case rested here the plaintiff would still be entitled to your verdict.

The defendants (Scheppers Brothers) allege, however, and have undertaken to prove that the notes were not so transferred to the bank, but were taken possession of by it without warrant or authority; in other words, that Joseph Bullock left an envelope containing them with the cashier, to be retained until called for, and that the notes were improperly extracted and applied to the plaintiff's use. If this allegation is true, the fact constitutes a complete defence. In such case the bank had no right to the notes, and cannot recover upon these in suit, which represent them.

Thus we reach the only question in the case: Did the bank acquire possession of the two notes in the manner alleged by the defendants?

The burden of proof is on the defendants. They must satisfy you that their allegation is true or the defence fails. The plaintiff must be allowed the benefit of the presumption arising from
37 its possession of the notes, and until it is overcome by proof nothing more than this presumption is required to sustain the right to recover.

To satisfy you of the truth of their allegation, the defendants point

to the testimony of Joseph Bullock, who says, in substance, that he was in the habit, just preceding the failure of their firm, of carrying commercial paper about with him in an envelope, endorsed, with a view to borrowing or raising money wherever it could be obtained; that he would occasionally leave the envelope with the cashier of the bank over night, and sometimes longer, for safe-keeping; that on Thursday, as he thinks, before the failure of Bullock's Sons, he left this envelope with the cashier, in pursuance of his habit, with request to take care of it for him until called for; that on Friday he became discouraged respecting the firm's affairs and called on counsel, when a suspension was resolved upon, and on Monday their failure
38 was announced; that he never called for the envelope left at the bank or saw it after Thursday; that it contained a miscellaneous lot of papers; some of it might have been Scheppers Brothers'; he cannot recollect; it is his impression some of it was. He further says the only loan they obtained from the bank on which collaterals were given was a call loan of $50,000 in April, 1873; that collaterals were given for this loan when it was made, but none afterwards, so far as he can remember. (The notes of Scheppers Brothers in controversy, it will be remembered, are of a much later date than this loan, and could not have been left as collateral when the loan was made.)

To answer the defendant's allegation and the testimony produced to support it, the plaintiff called Mr. Schetky, its cashier, who testifies that on the day of Jay Cooke's failure, September 17, 1873, Joseph Bullock came to the bank, took off his hat, and drew a number of notes from it. You will observe that his testimony is very circumstantial, including the Scheppers Brothers' notes in
39 controversy, which he handed to the witnesses, with the remark, "Put these with the rest of my collaterals;" that turning them over and seeing they were not endorsed he handed them back for endorsement; that Mr. Bullock endorsed them, and the witness then gave them to the discount clerk to take care of; that an entry was made of them, and they have remained in the bank ever since.

Mr. Marshall, the discount clerk, and Mr. Noblett, the president, were also called, but the former only knows that he received the notes from the cashier and entered them, and the latter that he saw them in the bank about this time. They do not know when or how Mr. Schetky got them.

Mr. Schetky, having thus testified that the notes were given him to hold as collateral for the call loan of $50,000, the defendants recalled Joseph Bullock, who says Mr. Schetky is mistaken; that he, Mr. Bullock, did not give him collaterals on the $50,000 call loan at or about the time of Jay Cooke's failure, or at any time after
40 it was obtained; that he never was requested to do so; that he was in the habit of delivering Mr. Schetky's paper in an envelope to hold until such time as he would call for it, but never

as collateral; that he did not give him these notes as collateral, as Mr. Schetky has stated.

Thus it is seen that the testimony of Mr. Bullock and Mr. Schetky is in direct conflict, and the question involved in the case depends mainly upon the credit which you shall attach to what the one or the other of these witnesses says. The claim and right of the bank, as set up, rests on a receipt of the notes from Joseph Bullock as collateral security for the $50,000 loan. Joseph Bullock testifies that the bank did not so receive them, while Mr. Schetky testifies that it did. Which of these witnesses will you believe? If you find them entitled to equal credit—nothing tending to show dishonesty or mistake in either—the decision should be with the plaintiff, who can stand on his possession of the paper, the burden of proof respecting the question raised being on the defendants, as before said. Mr. Bullock does not seem to have any connection with the case which
41 should bias him, nor is his credibility or fairness directly attacked, except by the testimony of Mr. Schetky. Mr. Schetky has no direct interest in the result of the suit. Whether his connection with the plaintiff is likely to bias him you must judge.

Comment has been made by counsel on the entry of the notes in the books of the bank, and on the fact that a part of the notes entered as received from Mr. Bullock, with the two in question, were not received by Mr. Bullock until several days later than the date of the entry. You must determine what weight these circumstances should have in ascertaining the credit to be accorded to Mr. Schetky's testimony. You will be slow to find that either of the witnesses has committed perjury. In the absence of adequate motive appearing for such a crime it should not be imputed to any one without evidence clearly requiring it. Do you see any motive calculated to lead either of these witnesses into such folly and wickedness? Is one or the other of them honestly mistaken? If so, which? Mr. Bullock says, as before stated, that he left the notes in an envelope with the cashier, to be kept for him until called for.
42 You see the difference between the statements of the witnesses—how slight, and yet how important. Mr. Schetky says the notes alone were handed to him, with direction to put them "with the rest of" Mr. Bullock's collaterals. Can this testimony be reconciled upon the hypothesis of misunderstanding or forgetfulness? Is there anything in the surrounding circumstance calculated to render one of these statements more probable than the other? You have heard the views of counsel respecting this. If Mr. Bullock was in great need of money (and he confesses he was) when he left the paper, (for which he did not return,) why did he leave it? Why did he not get it again? But in considering this it must be remembered that he had no right to use the two notes in question for his own benefit; he held them simply as an agent or commission merchant, to employ them or their proceeds for the defendants' use. Still, there is reason to believe Bullock's Sons did apply a large
43 amount of this paper to their own use. How far the other notes—said to be in the envelope—were available for raising

money, we do not know. On the other hand, why should he have placed the paper in Mr. Schetky's hands as collateral for the $50,000 loan? He does not appear to have been asked for collaterals. Mr. Schetky says he was not. Is it probable that he would, at a time when pressed for means, voluntarily make such a deposit of collaterals *as* especially as he would have to break his faith with Scheppers Brothers by thus applying their property to his own use? I do not suggest that it is or is not probable that he would do this, but simply submit the consideration to you as one that properly arises in passing upon the question involved

In conclusion, if you find that the defence set up is sustained by the proof; that is to say, that the plaintiff got the two notes in question, as alleged by the defendants, your verdict will be in the defendants' favor; otherwise, it will be for the plaintiff in $12,000.

44 And thereupon the counsel for the plaintiff did then and there present to the court a memorandum of points of exception, and ask that the same be noted, whereupon the court order the same to be filed as follows, to wit:

The Corn Exchange National Bank
vs.
Scheppers et al.

The court has charged the jury that the two notes referred to as having been left with the bank were given by the defendants to B. Bullock's Sons in purchase of wool or to be discounted, and that the leaving of the notes by Joseph Bullock with the bank as collateral, as alleged by plaintiffs, would have been a fraud upon the defendants. We wish to except to such portions of the charge as mention these statements.

45 And afterwards, to wit, on the 26th day of April, A. D. 1881, the jurors aforesaid, upon their oaths and affirmations aforesaid, respectively do say that they find for the defendants.

46 And thereupon, afterwards, to wit, on the 29th day of April, A. D. 1881, the plaintiffs, by their attorney, come into court here and move the court for a new trial, and file reasons in support thereof, which being read is as follows, to wit:

C. C. U. S., e. d. Pa., Oct. session, 1880.

The Corn Exchange National Bank
vs.
Scheppers Brothers. } No. 11.

And now, April 29th, 1880, the plaintiffs move the court through their counsel for a new trial in the above entitled case.

Reasons.

1. The learned judge who tried the cause erred in permitting the

defendants to prove by their witness, Edward Scheppers, that there was no consideration given to the defendants for the eighty-five thousand dollars ($85,000) in notes given by them to Benjamin Bullock's Sons, in the summer of 1873, notwithstanding the objections of the plaintiffs that they had received insufficient notice for the making of such a proposed defence.

47 2. The learned counsel for the defendants improperly stated to the jury in his summing up in substance as follows: "That it had been stated that there were two friends of the cashier of the plaintiff upon the jury, but no matter, who had boasted of that he entreated them to arise to meet the occasion, to do their duty, etc.," the natural effect of such a statement being in a measure, at least, to arouse suspicion in the jury box and to bring into question with their fellows the motives of those who contended in favor of the plaintiffs.

3. The learned judge who charged the jury erred in using the following language: "In answer to this case the defendants show that in 1873 they drew a very large number of promissory notes to the order of Benjamin Bullock's Sons, to whom they were delivered to be used in purchasing wool for the defendants' use, Bullock's Sons procuring the notes to be discounted and applying the proceeds to such purchases. Subsequently, Bullock's Sons, who were transacting a business on their own account also, failed, having received a large amount of Scheppers Brothers' paper, which they had not so procured to be discounted and applied to the purchase of

48 wool, as it was their duty to do," thereby withdrawing from the jury the question of fact as to whether or not the paper of the Scheppers, in the hands of the Bullocks at the time of their failure, was or was not paper made for the accommodation of the Messrs. Bullock.

4. The same learned judge erred in charging the jury as follows: "In the settlement of the Bullock's Sons' estate it was discovered that two of the seventeen notes held by the Corn Exchange Bank, which Scheppers Brothers had received on the extension granted them, had not been discounted by the bank and the proceeds applied to the defendants' use, as they supposed when the renewals were executed," thus withdrawing from the jury the question of notice to the Scheppers derived at the meeting in Mr. Bullock's parlor, or otherwise, that the said two notes had not been discounted by the plaintiffs prior to their application for a renewal or extension thereof.

5. The same learned judge erred in further charging the jury absolutely as follows: "Bullock's Sons had no right to use the notes received from Scheppers Brothers for any other purpose than

49 the purchase of wool," a receipt for many of the notes showing that they were given purely for the accommodation of the Bullocks, and the receipt for the notes in the question impliedly, if not expressly, authorizing the Bullocks to use them as accommodation paper for their own purposes.

6. The same learned judge erred in charging the jury as follows: " * * * If Bullock's Sons, in disregarding their duty, transferred them to another for their own use, the transferee, having no notice of the fraud, would possess a good title and could not recover up on the notes," thus impliedly stating, as a fact, that the notes were not given by the Scheppers Brothers to Bullock's Sons for their (Bullock's Sons) own use and withdrawing that question from the jury, and stating that such a transfer by Bullock's Sons would be a fraud.

7. The same learned judge errred in further in charging the jury as follows: " But in considering this it must be remembered that he (Mr. Bullock) had no right to use the two notes in question for his own benefit; he held them simply as an agent or
50 commission merchant, to employ them for the defendants' use," thus withdrawing from the jury the question of fact whether or not the notes had been delivered to Bullock's Sons for their own use.

8. The same learned judge erred in further charging the jury as follows: " It is probable that he would " (referring to Mr. Bullock) " at a time when pressed for means voluntarily make such a deposit of collaterals, and especially as he would have to break his faith with Scheppers Brothers by thus applying their property to his own use," thus treating as an admitted fact in the case that the notes were not delivered to Bullock's Sons for their own use, and withdrawing that question from the jury, there being evidence that the notes had been delivered to Bullock's Sons to be used for their own purposes.

(Signed) SHARPLESS & JOHN C. BULLITT.
Of Counsel with Pl'ffs.

51 (Endorsed:) 11; Oct'r sess. 1880; C. C. U. S., e. d. Pa.; Corn Exchange National Bank *vs.* Scheppers Bros. Motion for a rule for a new trial, ex parte plaintiffs and reasons. Filed April 29, 1882. Sharpless, Bullitt.

52 And thereupon afterwards, to wit, on the 28th day of June, A. D. 1881, the plaintiffs, by their attorney, come into court here and move the court for leave to withdraw their motion for a rule for a new trial.

And thereupon on the day and year last aforesaid the court grant to the plaintiffs leave to withdraw their motion for a rule for a new trial without prejudice.

And thereupon on the day and year last aforesaid came the defendants, by their attorneys, and move the court for judgment; and thereupon it is ordered, adjudged, and decreed that judgment be entered on the verdict in favor of the defendants against the plaintiffs.

Whereupon judgment is entered accordingly.

53 *Bond sur Writ of Error.*

In the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

The Corn Exchange National Bank
vs.
Emile Scheppers, Francois Scheppers and Edward Scheppers, copartners trading as Scheppers Brothers.

Know all men by these presents, that we, the Corn Exchange National Bank, as principal, and John F. Gross, 65th street and Haverford avenue, and Henry C. Howell, 1009 Race street, all of the city of Philadelphia and state of Pennsylvania, are held and firmly bound unto Emile Scheppers and Edward Scheppers, sued with Francois Scheppers, in the sum of five hundred dollars ($500), lawful money of the United States of America, to be paid to the said Emile Scheppers, Francois Scheppers, and Edward Scheppers, their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our successors, heirs, ex-
54 ecutors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-third day of July, A. D. 1881.

Whereas lately, at a Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in said court between the Corn Exchange National Bank, plaintiff, and Emile Scheppers, Francois Scheppers and Edouard Scheppers, copartners trading as Scheppers Brothers, defendants, judgment was rendered against the said the Corn Exchange National Bank; and the said plaintiff having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit—

Now, the condition of the above obligation is such, that if the said the Corn Exchange National Bank shall prosecute its writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

CORN EXCHANGE NAT. BANK,
By DELL NOBLITT, *Pres.*
JOHN F. GROSS,
HENRY C. HOWELL.

Sealed and delivered in presence of—
55 WM. A. WILLIAMSON.
SAMUEL BELL.

(Attest:) H. P. SCHETKY,
[SEAL.] *Cas.*

Approved by the court July 30, 1881.

SAMUEL BELL,
Clerk, &c.

(Endorsed:) No. 11, October session 1880; C. C. U. S., e. d. of Pa. The Corn Exchange National Bank *vs.* Scheppers et al.; bond sur writ of error. Filed July 30, 1881.

56 Be it remembered, that in the term of October, A. D. 1880, came the Corn Exchange National Bank into the Circuit Court of the United States for the eastern district of Pennsylvania, and impleaded Emile Scheppers and Edouard Scheppers, who were sued with one Francois Scheppers, lately trading with them as Scheppers Brothers, in a certain plea of assumpsit, &c., in which the said plaintiffs declared (prout narr,) and the said defendants pleaded (prout pleas.) And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court held at the district aforesaid, before the Honorable William Butler, judge of the said court, in the city of Philadelphia, on Thursday, the twenty-first day of April A. D. 1881, the aforesaid issue between the said parties came to be tried by a jury of the said district, for that purpose duly impannelled (prout list of jurors,) at which day came as well the said plaintiff and the said defendant by their respective attorneys; and the jurors of the jury aforesaid impannelled to try the said issues, being also called, came and were then and there in due manner chosen and sworn or affirmed, to try the said issue; and upon the trial the counsel of the said plaintiffs, to maintain the issue on their part—

57 U. S. C. C., Thursday, April 21, 1881. McKennan and Butler, JJ.

Corn Exchange Bank
vs.
Scheppers et al.

Present: Messrs. Sharpless and Bullett, for plaintiff; Messrs. Morgan and John G. Johnson, for defendants.

Plaintiff offers in evidence five promissory notes dated March 12th, 1875, for $2,200, $3,300, $2,300, $3,200 and $1,000 with protests; also $12,000 of coupon bonds of Scheppers Brothers, dated March 15th, 1875, received by the bank. Plaintiff closes.

Testimony on part of Defendants.

EDWARD SCHEPPERS, sworn and examined.

By Mr. JOHNSON: We propose to prove by this witness that there was no consideration given of any sort or kind by Benjamin Bul-

lock's Sons for the $85,000 worth of notes which in 1873 were settled by the giving of extension notes, which again were extended and which resulted in the notes now in suit. In other words, no consideration for the present notes. We propose to prove by
58 the witness first that there was no consideration given to them at all for the $85,000. We will probably prove by another witness that the bank gave no consideration to Benjamin Bullock's Sons for the two notes.

Mr. JOHNSON:

Question. You are a member of the defendant firm?

Answer. Yes, sir.

Testimony objected to; no notice was given of the purpose of the defense. Also objected to because the notices given are insufficient. Notices are as follows:

CHARLES E. MORGAN, JR. } Law offices of Morgan & Lewis, No. 382
FRANCIS D. LEWIS. } Walnut street. (Elevator on Third street.)

Corn Exchange Bank }
vs. }
Scheppers. }

PHILADELPHIA, *April 16th*, 1881.

NATHAN H. SHARPLESS, esq.;
Attorney for Pl'ff.

DEAR SIR: We have to-day filed an additional plea in the above suit, of which the enclosed is a copy.

Upon the trial defendants will prove that no consideration
59 was ever given for the notes sued upon, and that the same were but renewals of other notes originally given by Scheppers Bros. to the firm of Benjamin Bullock's Sons, for which no consideration was ever given.

Very truly,

MORGAN & LEWIS,
JOHN G. JOHNSON,
For Def'ts.

CHARLES E. MORGAN, JR. } Law offices of Morgan & Lewis, No. 302
FRANCIS D. LEWIS. } Walnut street. (Elevator on Third street.)

PHILADELPHIA, *April 16th*, 1881.

C. C. U. S., e. d. Pa., Oct. sess. 1880.

Corn Exchange Nat. Bank }
vs. } No. 11.
Sheppers Brothers et al. }

NATHAN H. SHARPLESS, esq.,
Att'y for Pl'ff.

DEAR SIR: Referring to our note of to-day we further notify you

that at the trial of the said suit the plaintiff will be required to show the consideration given by it for the promissory notes sued upon.

60 Very truly yours,

MORGAN & LEWIS,
JOHN G. JOHNSON.
For Def't.

Objection overruled. Exception.

Mr. JOHNSON:

Q. You are a member of the firm defendant sued in this case?

A. Yes, sir.

Q. You gave the Corn Exchange National Bank extended notes of your firm in 1873, did you not?

A. Yes, sir.

Q. To what amount?

A. $85,000.

Q. In how many notes and of what amount?

A. 17 notes of $5000 each.

Q. Were those notes given in extension of any other notes of yours?

A. Yes, sir.

Q. In extension of what other notes and for what amount?

A. In extension of notes given to Benjamin Bullock's Sons, to be discounted for our account.

Q. Subsequent to what date were all the notes given by you to Benjamin Bullock's Sons, for which you gave and exchanged these extension notes?

61 A. That I couldn't remember very well. It was some time in August we gave those notes to Benjamin Bullock's Sons.

Q. Was there any consideration, and if any, what, given by Benjamin Bullock's Sons to you for those 17 notes of $5000 each?

A. No, sir; there wasn't any consideration whatever for those 17 notes of $5000 each.

Q. How many notes did you give in all, or to what amount did you give notes to Benjamin Bullock's Sons, including the 17?

A. About $700,000.

Q. To what extent did you receive consideration, and what consideration?

A. We received consideration for about $582,000.

Q. In what way did you receive that consideration?

A. In wool, and I think $40,000 in money that Benjamin Bullock's Sons reimbursed us on a loan we made to them of $100,000.

Q. Was that $40,000 cash included in the $582,000 or not?

A. That is included in the $582,000.

Q. Do you know whether these 17 notes of $5000 each were the earliest or last, or middle of the notes which you gave

62 to Benjamin Bullock's Sons?

A. Those 17 notes were of the last bulk of notes we gave to Benjamin Bullocks and Sons.

Q. Is there any memorandum, however, by which you could give me the dates of those 17 notes?

A. Yes, sir; I have our book-keeper, and he will give that.

Q. What was the nature of your business with Benjamin Bullock's Sons which had anything to do with your giving this batch of notes?

A. We bought wool from Benjamin Bullock's Sons in different ways. We bought wool in a general way, then we bought wool on commission.

Mr. BULLITT:

Q. Benjamin Bullock's Sons, in some instances, bought wool on commission for you?

A. Yes, sir.

Mr. JOHNSON:

Q. Did you have any written arrangement with Benjamin Bullock's Sons concerning the purchase of any quantity of the wool for which you gave any notes?

A. Yes, sir; we had an agreement.

63 Q. Please look at the papers I hand you and state what those two agreements are.

A. They are as follows:

PHILADELPHIA, *May* 29, 1873.

BENJAMIN BULLOCK'S SONS,
Philadelphia.

GENTLEMEN: We wish you to purchase for us 300,000 pounds of fleece washed, tub washed, and unwashed wool in Pennsylvania and Ohio at first cost, not exceeding 42 and a half cents for washed wool and 30 cents for unwashed; said wool to be purchased with a specialty for the combing and delaine qualities. It is distinctly understood you will charge, *it* addition to the above prices, a commission of two cents per pound, which is the commission you pay your agents. We also agree to pay freight, drayage, storage, and insurance on same, and allow you 5 per cent. commission on the actual cost of the above wool. We will issue our notes from time to time, as you may require, and at such dates as we can mutually agree on; said paper to be converted into money for our account at the market

64 rate. We agree, should we desire to sell any portion of the wool —that is, clothing—we will allow you 5 per cent. commission for selling, grading, and guaranteeing the sale.

(Signed) SCHEPPERS BROTHERS.

PHILADELPHIA, *May* 29, 1873.

The above order we accept, and shall endeavor to fill to the best of our ability.

Very truly,
BENJAMIN BULLOCK'S SONS.

PHILADELPHIA, *July* 3, 1873.

BENJAMIN BULLOCK'S SONS.

GENTLEMEN: In addition to the wool authorized to be purchased by our agreement of May 29th, 1873, we agree to the purchase of 500,000 pounds of same description of wool on the same terms and conditions, but at a cost not exceeding 45 to 45 and a half cents, being first cost to you in the west.

(Signed) SCHEPPERS BROTHERS.

Q. Under what contract was any wool bought, and if so, state how much and how the wool was paid for?

A. There was bought under that contract 800,000 pounds of wool, and we gave for the buying of the wool notes to be discounted for our account.

65 Q. To what extent?

A. $510,000.

Q. What would 800,000 pounds of wool cost?

A. It would cost about 425,000 dollars, with interest and commission.

Q. What was the difference for?

A. The difference was to buy more wool.

Q. Did they buy more wool?

A. No.

Q. Was this $425,000 all bought on commission?

A. Yes, sir; the wool was bought on commission.

Q. Did the $425,000 include the commission, or was that extra?

A. It included the commission.

Q. And the $510,000—notes—were notes given by whom to whom?

A. Those notes were given from us to Benjamin Bullock's Sons.

Q. Were they given after the wool was purchased, or before, or how?

A. Before.

Q. Why before; what was to be done with them?

A. Because they had to raise the money, discount them, and with the proceeds they had to send that to the west to pay for the wool.

Q. $510,000 would have to be discounted?

A. Yes, sir.

66 Q. And the discount is additional to the 425?

A. The discount is additional.

Q. Do you know what the discount was, or haven't you the figures for that?

A. No.

Q. Was any wool bought directly from Benjamin Bullock's Sons?

A. Yes, sir.

Q. To what extent?

A. About 211,000 pounds.

Q. Representing about what price?

A. About $98,000.
Q. How did you pay for that?
A. With notes.
Q. To what extent?
A. Exactly the amount of the bill.
Q. Who was to get this discounting of the notes done?
A. Benjamin Bullock's Sons, according to the contract.
Q. Was the contract varied from in that receipt?
A. No.
Q. Was this the end of the notes which you gave to Benjamin Bullock's Sons; were the $510,000 notes and the amount of notes given to settle for 211,000 pounds the last notes you gave them? Did you give them any other notes after you had given the
67 510,000 dollars of notes and the $98,000 for the 211,000 pounds of wool?
A. Yes, sir; we gave them $100,000.
Q. Did you take any receipt for that?
A. Yes, sir.
Q. Was that given before or after?
A. It was given before; between the two; we gave, I think, $100,000 first, and then we gave the other.

Mr. MORGAN:

Q. That is between $98,000 and the $510,000, the $100,000 was given?
A. Yes, sir.

Mr. JOHNSON:

Q. (Paper shown witness dated June 23, 1873.) Is that the receipt for those notes, the $100,000?
A. Yes, sir; it is as follows:

"Received, Philadelphia, June 23d, 1873, of Scheppers Brothers, their 20 promissory notes for $5,000 each, due respectively October 13th, October 13th, October 15th, October 15th, October 15th, October 17th, October 17th, October 17th, October 17th, October 20th, October 20th, October 20th, October 22d, October 22d, October 22d, October 24th, October 24th, October 24th, October 27th, Octo-
68 ber 27th, October 27th. These notes being issued for our benefit, to be protected by us at maturity.

"BENJAMIN BULLOCK'S SONS."

Q. Are they all paid or not at the present time?
A. They were paid. They were 20 in number.
Q. Did you take receipts for the other notes which you gave?
A. Yes, sir.
NOTE.—The following papers were read by Mr. Johnson:
Received, Philadelphia, June 9th, 1873, of Scheppers Brothers on account of purchase of wool, their 20 promissory notes for $5,000

each, due respectively three November 3, 6; three November 7, 10; four November 9, 12; 3 December 3, 6; 3 December 7, 10; 4 December 9, 12.

BENJAMIN BULLOCK'S SONS.

Received, Philadelphia, July 7th, 1873, from Messrs. Scheppers Brothers their 20 promissory notes each for $5,000, 5 maturing November 4th, 1873, 5 on November 8th, 1873, 5 on November 12th, 1873, and 5 on November 17th, 1873, aggregating $100,000, being for and on account of wool purchased.

BENJAMIN BULLOCK'S SONS,
By THOMAS SINNICKSON.

69 Received July 15th, 1873, from Scheppers Brothers their 20 promissory notes, each for $5,000, dated 2 June, 18th, 2 the 21st, 2 the 24th, 4 the 27th, 2 July 1st, 2 July 5th, 2 July 8th, 2 July 12th, 2 July 15th, due five months after said dates, aggregating in amount $100,000, and being on account of wool purchased or to be purchased.

BENJAMIN BULLOCK'S SONS,
By THOMAS SINNICKSON.

Statement.

Dr. Messrs. Scheppers Brothers
to Benjamin Bullock's Sons.

(Here follows in detail from June 4th to July 7th different bills of wool aggregating, average due July 26th, $43,093.50), 5 and a half months interest, 6 per cent., $1,185.07.

Philadelphia, 7, 23, '73, $44,278.57.

Received payment in Scheppers Brothers' notes for 4 of $5,000 and one of $2,139.28, maturing December 26; 4 of $5,000 and one of $2,129.29, maturing January 26th, 1874.

BENJAMIN BULLOCK'S SONS.

Received, Philadelphia, July 23rd, 1873, of Scheppers
70 Brothers their 12 promissory notes for $5,000, due respectively, 3 December 20th, 3 December 24th, and 2 January 14th, 2 January 17th, 2 January 20th, aggregating $60,000, on account of wool purchased or to be purchased.

BENJAMIN BULLOCK'S SONS.

Received, Philadelphia, August 1st, 1873, of Scheppers Brothers their 30 promissory notes, each for $5,000, maturing as follows: 1 January 2–5, 1 January 5–8, 1 January 7–10, 1 January 14–17, 1 January 18–21, 1 January 21–24, 1 January 25–28, 2 January 28–31, 2 February 4–7, 2 February 8–11, 2 February 11–14, 3 February 15–18, 2 February 18–21, 3 February 22–25, 4 February 25–28, aggregating in amount $150,000 for purchase of wool, or to be protected by us at maturity.

BENJAMIN BULLOCK'S SONS.

Statement.

PHILADELPHIA, *September* 2, 1873.

Scheppers Brothers

to Benjamin Bullock's Sons, Dr.

(Bills in detail from June 23rd, 1873, to August 30th, 1873, for wool aggregating $54,617.59, due by average August 9th, 1873.)

71 Received notes dated September 3rd, at 3 months for $20,000, 4 months for $34,000, $614 interest added.

BENJAMIN BULLOCK'S SONS.

Q. The last of these receipts is dated August 1st, 1873, and is for 30 notes of $5,000 each. Was anything said at the time those notes were given on what account they were given?

A. It was understood for wool purchased.

(Objected to.)

Q. What was said?

A. The receipt says that those notes are given.

Q. I don't mean what the receipt says, but what was said between you people in giving those notes.

A. For the purchase of wool.

Q. Did the amount of wool to be purchased under the written contract amount to the number of notes which had been given previously, and this $150,000?

(Objected to.)

Q. I want to know how the state of your account—the amount of the notes which you had given at the time this was done—compared with the amount of wool bought under the contract?

A. Benjamin Bullock's Sons were short, I suppose, about 70,000.

72 The COURT:

Q. Short of what?

A. Of money.

Mr. JOHNSON:

Q. Which was the biggest, the wool purchased or the notes given to Benjamin Bullock's Sons; which footed up the most?

A. I said before that we had bought wool to the amount of $425,000, and notes given for $510,000.

Q. What was said when he asked you for those notes, and when you gave them, and why you gave them, and what was to be done with them. I refer to the 30 notes?

A. I gave those notes for the purchase of wool and for no other purpose.

Q. Do you mean wool then purchased?

A. No; wool to be purchased.

Q. Was the wool purchased?

A. No; the wool was not purchased.

Q. Do you know when Benjamin Bullock's Sons failed?

A. Yes, sir; it was on the 27th of September, 1873, I think.

Q. Were you present at any meeting of the creditors on the 28th day of Sepetember, 1873, in the evening?

A. Yes, sir; I was present at that meeting.

Q. Who were present there?

73 A. Mr. John C. Bullitt, Mr. Dickson, Mr. Noblit, the president of the Corn Exchange Bank, Mr. Benjamin Bullock, Mr. Joseph Bullock, Mr. Elliott, my brother and myself, and some others.

Q. Was there anything said by Mr. Sinnickson, the book-keeper of Benjamin Bullock's Sons, at that meeting about any of your notes not having been discounted, in the presence of Mr. Noblit, the president of the bank; and if so, state it in your own words?

A. Yes, sir; Mr. Sinnickson made a statement that some of our notes were yet in possession or ought to be in possession of Benjamin Bullock's Sons at that time—that those notes were not discounted—that we had received no consideration for them, and that we were entitled to get those notes back to us.

Q. Did you do anything in pursuance of that statement with view of getting back your notes?

A. Yes, sir.

Q. What did you do?

A. We went next morning to Benjamin Bullock's Sons' office and asked for those notes. Mr. Sinnickson and Mr. Benjamin Bullock told us that they couldn't find them.

74 Q. Did you know at that time that the Corn Exchange Bank held any of your notes for which no consideration had been given?

A. No, sir.

Q. When did you learn that?

A. In 1876; I may be mistaken in that date; it was in 1876 or 1877.

Q. Did you make any settlement with the Corn Exchange Bank of any of your notes given to Benjamin Bullock's Sons, and if so, when did you make a settlement, and what amount of notes did you settle on?

A. We made a settlement first in 1873.

Q. What was the date, as near as you can give it?

A. It was in December, I think; I cannot remember exactly; we made a settlement for $85,000 of notes, and subsequently we renewed a settlement.

Q. (Paper shown witness.) State which of the receipts there contains the notes which you settled with the Corn Exchange Bank?

A. I think those two receipts do; I think the receipt of August 1st, 1873, is one of them; I should be obliged to ask my book-keeper that question, however.

Q. That contains some of them?

75 A. Yes; that contains all; I think so, but I am not sure; the last one I mean; I say I think so, but I am not sure, and won't say surely.

Q. Who made the settlement, you or your brother?

A. My brother, or rather I think the book-keeper made the settlement with him.

Mr. SHARPLESS:

Q. I would like you to be sure about that?

A. You will have to look at the books.

Q. You think they are in that receipt; that is the effect of your testimony that they are all in there?

A. I think so, but I am not sure.

Q. So far as you know they are all in this receipt of August 1st, 1873?

A. Yes, sir; but the book-keeper will be able to rectify it if that is a mistake.

Q. Who got this receipt from Benjamin Bullock's Sons; did you get it yourself personally or your book-keeper?

A. No; I didn't get it personally.

Q. Who delivered the notes?

A. I don't know; they were delivered at different times; sometimes Mr. Bullock came to the mill and got the notes there, and sometimes we sent them to them by our messenger.

Q. You said earlier in your testimony in regard to the

76 $85,000 of notes that the bank held at the failure of Benjamin Bullock's Sons that they were given to Mr. Bullock to be discounted?

A. Yes, sir.

Q. And by and by you said that he was always short of money and wanted it, and *and* that you gave him notes for that purpose?

A. Short of money to make purchase for the amount of wool we needed to buy.

Q. There was a little laugh here a while ago when you spoke about somebody being short; who was it that was short?

A. I didn't mean to say that I gave the money because Mr. Bullock was short of money.

Q. What did you use the word "short" for?

A. Short for the amount of wool to purchase for us, and only that.

JOSEPH W. BULLOCK affirmed, and examined by Mr. Johnson.

Q. You were a member of the firm of Benjamin Bullock's Sons in 1873?

A. Yes, sir.

Q. Who was the managing man in the firm?

A. I was of the financial department.

Q. Did you have any dealings with the Corn Exchange
77 Bank during the year 1873 in the way of obtaining money?

A. Yes, sir; I was not only a director, but borrowed money from the bank.

Q. In what way did you borrow money from it?

A. The first transaction that I had with them, I think, was in December, 1872. I borrowed $50,000 on call loan.

Q. Did you give any collateral?

A. I did.

Q. It was a call loan of your firm?

A. Yes, sir.

Q. What was the collateral you gave?

A. As far as I recollect the principal part of it was Glenham Woolen Company,—Russell, Dodd & Fraser.

Q. What kind of notes?

A. They were promissory notes.

Q. Are you able at this time to recall the amount of them?

A. I think it was $50,000. It is my impression they were all that form.

Q. Were thay single or endorsed?

A. I think some of them were single, and some might have been endorsed.

Q. Did that loan remain unpaid?

A. Until some time in April, 1873, at a meeting of the directors to find the state of the bank and declare a dividend. I had a little pride as a director and I took that loan away. After the as-
78 sets of the bank were counted I had it renewed.

Q. Can you recall that date?

A. I think it was in April, 1873.

Q. The call loan was for how much?

A. $50,000.

Q. Were there any collaterals given for that?

A. Yes, sir.

Q. What collaterals?

A. I think it was Glenham, and it might have been some portion of Landenberg. I was handling an immense amount of paper at that time.

Q. To what extent in amount, if you remember, was the collateral?

A. $50,000.

Q. Was that call loan ever paid before your failure?

A. No, sir.

Q. Did you at any time give any other collateral upon that loan than the collateral which was given when it was made?

A. Not to my recollection.

Q. Did you at any time give any notes of Scheppers Brothers as collateral for that loan?

A. There might have been of this new loan renewed. There might have been a few notes of Scheppers Bros. at that time.

The COURT:

Q. At what time?

79 A. At the time I got it.

Q. In April?

A. In April.

Mr. JOHNSON:

Q. Did you give as collateral to it any notes made by Scheppers subsequently to that loan?

A. I think not.

The COURT: I don't know whether I understand that. The witness says when he got it renewed in April, 1873, that he may have given some of Scheppers' notes.

The WITNESS: Yes, sir.

Q. Then the note was renewed afterwards, was it?

A. No, sir; not at all.

Q. The note just laid?

A. Yes, sir.

Mr. JOHNSON:

Q. You say that there were no new notes given; no notes dated later than that of Scheppers' for it?

A. No, sir.

Mr. SHARPLESS: He says he thinks not.

The WITNESS: I don't say positively.

Mr. JOHNSON:

Q. Were you asked at any time to give additional collateral for that loan?

A. I was not.

The COURT:

Q. That is, not after the renewal of it in April?

80 A. No, sir.

Mr. JOHNSON:

Q. Your other manner of obtaining money from the bank was what; you obtained it on a call loan of $50,000; what other financial transaction did you have?

A. Sometimes I would get a discount from the bank.

Q. Were there any other ways; did you ever or not obtain any individual loan from them except this $50,000?

A. I have no recollection of that; all the loans were of the firm; they were all firm matters.

Q. Were or were not the rest of your transactions with them upon discount?

A. All discount.

Q. How would Benjamin Bullock's Sons stand in the discounted paper—as maker or endorser?

A. Our business was generally conducted altogether on bills receivable; we had about $3,000,000 to roll around every year for two years, and it kept me rather busy.

Q. In discounting paper, was any collateral given at any time?

A. No, sir; it was discountod right out.

Q Do you know anything about leaving any notes at any time with the Corn Exchange Bank or one of their officers? And if so, state what it was.

81 A. My necessities were such that I carried some paper ready to absorb any money that I could find; very frequently I got tired of opening my pocketbook, and I have left them in the bank in an envelope.

The COURT:

Q. You got tired of carrying paper?

A. No, sir; not tired of carrying paper, but I had a paper with promissory notes in an envelope ready to get money wherever I could; I was paying from $30,000 to $40,000 a day.

Q. What did you say about leaving it?

A. I left it at the Corn Exchange Bank.

Q. That paper?

A. Yes, sir.

Mr. JOHNSON:

Q. Was that paper loose, or how?

A. It was loose in the envelope.

Q. With whom would you leave it in the bank and for what purpose?

A. I would leave it there as a deposit so that I could get it the next morning.

Q. Did you leave it there at any time as collateral to anything?

A. I have no recollection of that.

Q. How was your habit with regard to that paper or that envelope so left?

A. I used to carry it in my side pocket.

Q. After you left it there—when you once left it there—

82 did it remain there permanently?

A. No, sir; I think I left it there on Thursday and on Friday I found from my letters that the Glenham Woolen Co. and Mr. Landenberger wanted money, and it would require $60,000 or $70,000; I felt that the strain was on me so great I didn't know which way to turn, and I went around to our counsel and informed him of it; he called in his partner and stated to him the difficulty, and the result of it was that I never went into the bank; afterwards I went home.

Q. Where was this envelope at that time?

A. In the Corn Exchange Bank.

Q. Had it been left there in accordance with this custom of which you have spoken?

A. Yes, sir.

Q. Was there any Scheppers papers in that?

A. There might have been; it is very hard to recollect seven years and a half ago; it is my impression that there was some.

Q. To what extent; have you any recollection?

A. I have none; it was a miscellaneous class of papers; some of it has been paid and some not.

Cross-examination by Mr. SHARPLESS:

Q. When you left this envelope containing some papers at the Corn Exchange, who did you give it to?

83 A. I generally gave it to the cashier.

Q. You got it again, subsequently?

A. Yes, sir.

Q. Did you miss any paper from it?

A. No, sir; it was a small amount, in my judgment, then. I think, from my recollection, that there was a manufacturer by the name of Burchell and one of Evans.

Mr. JOHNSON:

Q. Where was that envelope after your failure?

A. I should judge it was in the Corn Exchange Bank.

Q. Did you ever get it back at the time of your failure?

A. I did not.

Q. When you spoke about getting it back, what did you refer to?

A. I referred to after my conversation with the counsel, which was on Friday. I never entered the bank afterwards. There was a rumor in the street on Friday afternoon that we had suspended, and it got pretty well noised about on Saturday. I felt very much humiliated and mortified, and went home.

Q. Friday, you say, you saw your counsel?

A. I told him we were in trouble.

84 Q. What was the last day you had possession of that envelope in your pocket?

A. I think it was on Thursday.

Q. What did you do with it after it went out of your possession; to whom did you give it?

A. That afternoon, my impressions are, that I gave it to the cashier.

Q. On Friday you saw your counsel, and didn't go into the bank to see after it?

A. I think I was not in the bank for maybe six months afterwards.

Q. Did you have a consultation in Mr. Bullitt's presence when you met on Sunday with Mr. Dell Noblit present?

A. I had no conversation with him.

Q. Was he present?

A. I think he was; I will not be certain of that; we held it on Sunday evening, I think.

Q. What day was your failure announced to the public?
A. On Monday.
Q. Did you ever receive back that envelope with these notes in it from the time you left it on that Thursday to the present?
A. Not to my knowledge.

Mr. SHARPLESS:

Q. Did you ever apply for it?
A. No, sir; the reason I didn't apply for it was because I
85 felt so humiliated and mortified; I didn't want any more to see it.

EMILE SCHEPPERS, sworn and examined.

By Mr. JOHNSON:

Question. You are also a member of the firm defendant?
Answer. Yes, sir.
Q. By whom was the firm practically carried on in 1873; which of the members?
A. My brother Edward.
Q. Francois was one of the members of the firm?
A. Yes, sir.
Q. Did he take any active part in it?
A. No, sir.
Q. Do you remember the time of the failure of Benjamin Bullock's Sons?
A. Yes, sir.
Q. Were you present at the meeting at Mr. Bullitt's house when Joseph W. Bullock and Mr. Dell Noblit and your brother and others met there?
A. Yes, sir.
Q. Did you hear any statement made by Mr. Sinnickson?
A. Yes, sir.
Q. What was the statement?
A. It was a statement that of our property $45,000 was not disposed of, and it ought to be in their pocket-book or in their possession.
Q. Was Mr. Dell Noblit present when that statement was
86 made?
A. Yes, sir.
Q. Did he say anything further about the consideration for it; was there anything further said in that connection by Mr. Sinnickson?
A. No, sir.
Q. You have heard the testimony of your brother as to the amount of notes which you gave to Benjamin Bullock's Sons; were there any of the notes which you gave to them for which you got no value; did you get value to the extent of the notes which you gave to Benjamin Bullock's Sons?

A. No, sir; we didn't.
Q. To what extent were you short?
A. To the extent of $127,000.
Q. Do you know the five notes which are in suit in this case; have you seen them?
A. No, sir; I haven't seen them.
Q. (Handing to witness.) Whose signature is that?
A. One signature is mine, one is my brother's, and another is my brother's.
Q. Those notes were given to the Corn Exchange Bank for what?
A. In 1875, for the extension of——

Mr. SHARPLESS:

87 Q. Weren't those delivered under an agreement in writing; there was an agreement in writing for an extension?
A. Yes, sir.
(Said paper called for and produced by Mr. Johnson.)

Mr. JOHNSON:

Q. (Paper shown witness.) State whether that is the agreement under which those notes were given?
A. It is.
(Agreement was here read by counsel.)
Q. Did you get receipts for the notes which you gave, including these notes?
A. Yes, sir.
Q. (Paper shown witness.) Are these the receipts?
A. Yes, sir.
(Receipt read by counsel.)
Q. And those notes were given in exchange for other notes previously held by the Corn Exchange Bank?
A. Yes, sir.
Q. Is there any agreement covering the prior batch?
A. There was an agreement in 1873.
Q. What became of the old batch of notes—I mean the previous original batch of notes; who has them—this paper given to Bullocks, which went through the Corn Exchange?
A. I think the bank holds those notes yet.

88 Mr. SHARPLESS:

You notified us to produce them, and we have produced them.

Mr. JOHNSON:

I was perfectly well aware of that. They are in the possession of the bank. Now, there was a prior agreement in 1873. (Paper shown witness.)
Q. What is that paper?
A. It is not dated. I think it was made in 1873. That is the first extension.
(Paper read by counsel.)

Q. Were receipts given to you for that batch of notes?
A. Yes, sir.
(Receipts produced.)
Q. Are these the receipts?
A. Yes, sir; (receipts given for the notes first executed being for 17 notes for $5,000 each giving due dates offered in evidence by Mr. Johnson.)
Q. What interest was paid on these notes?
A. 7 per cent.
(Mr. Johnson now calls for the 17 original notes of $5,000 each, stated heretofore to have been in the possession of the bank.
Notes produced by Mr. Sharpless and handed to Mr. Johnson.
Mr. Johnson offers said notes in evidence.)
Q. When you made the extension in December, 1873, and again in 1875, were you aware that the Corn Exchange Bank had
89 not discounted two of the 17 notes of $5,000 each?
A. No, sir.

Cross-examination by Mr. BULLITT:

Q. I think you spoke of a meeting which occurred at my house; do you recollect the date of that meeting?
A. No, sir; it was a Sunday.
Q. Sunday evening?
A. Sunday evening; yes, sir.
Q. Do you recollect how that meeting came about?
A. Yes, sir; we had been notified by Mr. J. Bullock to be at your house at a certain hour; I suppose 7 or 8 o'clock; 8 o'clock I think.
Q. There were quite a number of gentlemen who were interested in some way or another in Benjamin Bullock's Sons?
A. Yes, sir.
Q. The fact was stated, was it not, that Benjamin Bullock's Sons would be obliged to suspend the next morning?
A. Yes, sir.
Q. And that it was deemed due their principal creditors—those who were going to be effected by it—that they should be advised of it as early as possible?
A. Yes, sir.
Q That is the way the meeting came about?
90 A. Yes, sir.
Q. State, as near as you can, what was said by Mr. Sinnickson about the notes which you say he said were not discounted?
A. Mr. Sinnickson stated the amount of paper endorsed by Benjamin Bullock's Sons; that is, of our paper. Then he stated that of that amount there should remain in their hands $45,000 of paper which they hadn't disposed of.
Q. Did you inquire of him what were the dates and amount of those $45,000 of notes?
A. No, sir.

Q. Do you recollect whether Mr. Sinnickson had a statement of the dates and amounts of those notes there?

A. No, sir; I don't believe he had.

Q. You don't recollect it, you mean?

A. I don't recollect it; no, sir.

Q. Did he state what batch of notes these $45,000 were?

A. No, sir; he didn't.

Q. Did you make any inquiry of him what those notes were at that time?

A. No, sir.

Q. Did anybody there at that time inquire of him what they were, that you heard?

A. I think not, sir.

Q. Did you afterwards make any inquiry about them; and if so, when first did you do it?

91 A. The next morning we made inquiry at the office of Benjamin Bullock's Sons.

Q. Of whom did you make that inquiry?

A. We made inquiry of Mr. Benjamin and Mr. Wande.

Q. Was Mr. Sinnickson there?

A. I think he was there; I don't recollect very well.

Q. Did you ask Mr. Sinnickson about it?

A. No, sir.

Q. What reply did Mr. Wande and Mr. Benjamin Bullock, or either of them, make to it?

A. They went to the safe and took out of the safe and looked in the pocketbook to see if they could find those papers. They couldn't find them.

Q. Did you ever make any inquiry afterwards of anybody about them; and if so, of whom?

A. I think we did.

Q. Who did you inquire of?

A. I didn't myself.

Q. I mean yourself; I am not asking you about anybody else.

A. I didn't myself.

Q. Never?

A. No; I think not.

Q. When you came to give extension notes upon the extension settlement you found out where all your paper was, did you not—in whose hands it was?

92 A. Yes, sir.

Q. Did you inquire of any of your creditors whether they had any of these $45,000 worth of paper which you say Mr. Sinnickson said hadn't been discounted?

A. So far as I recollect, I don't think we did.

Q. You knew that the Corn Exchange Bank held $85,000 of that paper, did you not; I mean of your paper?

A. Yes, sir.

Q. Did you make any inquiry about it of them?

A. I think not; I think we didn't make any inquiry about it.

Q. Did you ask them to sign an agreement for extension?

A. Yes, sir.

Q. You did that yourself, did you?

A. If I remember right, I think I did it myself; yes, sir.

Q. Why was it, if you had been put upon your guard by the remarks of Mr. Sinnickson, of which you have spoken, that $45,000 of this paper had not been discounted—why did you not make some inquiry to try to find out where that paper was?

A. We found that all our paper was held by third parties, and we took it for granted that they held it right. As we were asking extensions of time we thought it was not the right time to fight them, any how.

93

Q. You mean, then, to say that you thought it was wise not to attempt to make any question about these notes, as you were asking a settlement; that is what you mean, was it?

A. We didn't inquire any further. Finding that all our paper was held by third parties, we didn't inquire any further.

Q. When you came to make your second extension in 1875 did you make any inquiry?

A. No, sir; not that I remember.

Q. When was it that you did first make any inquiry about it?

A. When it was reported to us that some paper held by the Corn Exchange was proved before the auditor in the estate of Benjamin Bullock's Sons as discounted or held by them, then they had to withdraw two of those notes.

Q. Up to that time, then, you had never made any inquiry about it?

A. I didn't think we did.

Q. When was that?

A. I think it was in 1877.

Q. Did you make any inquiry of Joseph Bullock with reference to these $45,000 notes of which you speak?

A. No, sir; I don't think so; I think I didn't.

Q. Was he the person with whom you had mainly transacted your business previously?

94

A. Yes, sir.

Q. You never made any inquiry of him?

A. I saw Mr. Joe Bullock afterwards very seldom.

Q. I only wanted to know if you made any inquiry of him.

A. No, sir; I didn't.

Re-direct examination by Mr. JOHNSON:

Q. You have been asked whether you made any inquiry yourself with the view of trying to ascertain where these $45,000 worth of notes were. Did you instruct anybody or not to make such inquiry?

A. At what time do you mean?

Q. Soon after the time that the original statement was made.

A. I don't recollect.

AUGUST BROHM sworn and examined.

By Mr. JOHNSON:

Q. You are book-keeper for Scheppers Brothers, and have been since when?

A. I have been since they came to America in 1869.

Q. You heard some question as to whether any inquiries were made for the purpose of ascertaining about $45,000 of this
95 paper spoken of in connection with Mr. Sinnickson. Do you know anything about that?

A. Yes, sir; I made inquiries myself.

Q. At whose request?

A. At the request of Messrs. Scheppers, my employers.

Q. Who did you inquire of, what inquiries did you make, and what was the result?

A. I went different times to Mr. Sinnickson, the book-keeper of Benjamin Bullock's Sons, to find out the exact notes which ought to remain on hand undiscounted, and passed with him over his books to get at these notes, but I never succeeded.

Q. Did you communicate, or not, the result of your inquiries to Mr. Scheppers?

A. I think I mentioned it to them.

Q. Were you able to ascertain, or not, who had these notes?

A. I was able later on.

Q. How did you ascertain later on?

A. I ascertained it by the auditor's report—Mr. Colahan's report.

Q. Did you make any communication to either of the Messrs. Scheppers when you found it out?

A. I believe I did.

Q. State in a condensed form the state of the account between Scheppers Brothers and Benjamin Bullock's Sons?

A. I will have to refer to the statement which I have here.
96 I have here a condensed statement of our operations under a contract which was made on the 29th of May, 1873, showing all the notes which we gave to Benjamin Bullock's Sons, and the consideration received.

(Statement offered in evidence.)

Q. Have you also a list of papers?

A. I have together with the voucher.

(Statement and voucher offered in evidence by Mr. Johnson.)

Q. Please produce a statement of the discount of the original notes prior to the failure?

A. I have them here (producing the same). The last five notes of statement E. Z. B. one, and all of E. Z. B. two, are the statements furnished by Benjamin Bullock's Sons of the original discount of fifteen of the seventeen notes of $5,000 each.

Cross-examination by Mr. SHARPLESS:

Q. What was that account made out for?

A. It was made out to see exactly what the operations were.

Q. It is an account rendered by you to Benjamin Bullock's Sons?

A. No, sir; I made this account for my special use in 1875.

Q. Why did you want omissions excepted signed Scheppers Brothers?

97 A. I made this account to show to our lawyer, Mr. E. Spencer Miller, at that time, who had the matter in hand, to show him how our affairs stood in reference to the proving of our claim in the Bullock's estate.

Q. That was April 27, 1875?

A. Yes, sir.

Q. Subsequently to that you did prove against Bullock's estate and got the dividend?

A. We never got a dividend.

Q. Did you not prove your claim against the estate before the auditor?

A. No, sir.

Q. Did you prove for the whole of the paper you had given Bullock & Sons?

A. We proved for the balance of that account.

Q. You didn't prove for the $45,000 outstanding?

A. No, sir; we only proved for the balance of that account—$127,000.

98 Q. Does not this balance of $127,000 include all the paper which you had given to Bullock before his failure?

A. Yes, sir.

Q. Why, when we asked you a moment ago, did you not say so?

Mr. JOHNSON: You asked him if he proved for these $45,000 of notes and he said no.

Mr. SHARPLESS: No, the $45,000 of notes which Mr. Emile Scheppers speaks of, which he said he learned were outstanding. (To the witness:) Then you did prove for the whole of the paper which you had given to Benjamin Bullock's Sons. That is, as representing the balance of it in this account?

A. I don't know which way Mr. Spencer Miller made his proof. I know ours amounted to $127,000. In which legal way he made the proofs of that, I don't know.

Q. But if you had got the $127,000 you would have been indemnified for this outstanding paper that you had given to Benjamin Bullock's Sons, as you say; now, after the failure of Benjamen Bullock's Sons, did not Scheppers Brothers get some more wool from them; wasn't there some more delivered?

A. Not that I am aware of. There might have been some more delivered.

Q. Wasn't there about $100,000 worth more delievered?

A. To tell you the truth I was in Europe at that time. I came back only shortly before our failure.

Q. You say this subsequent statement beginning January 15th, 1874, and running down to September 15th, 1877, includes all the subsequent transactions?

A. This statement shows all the payment which we made to the bank upon the paper which was given in renewal. It does not show the subsequent transactions, but just the payment which we
99 made for the paper in renewal.

Q. Have you any account subsequent to the one which I have last shown you, showing a balance of $127,000, the transaction of Scheppers Brothers with Benjamin Bullock's Sons, between the close of that and the present time?

A. No, sir.

Q. And you are not able then to say whether or not Mr. Bullock after the failure did not deliver as much as $100,000 worth of wool to Scheppers Brothers.

A. I have noticed that some wool which is included in the statement has been delivered, I think one or two days after the failure, in completion of our contract. I think about 100,000 pounds. I have no personal knowledge of that. This wool which you refer to has been invoiced to us and included in that account. There has been no wool delivered to us without invoices, and no invoices have been given us which are not in that account.

THOMAS SINNICKSON sworn, and examined by Mr. JOHNSON:

Q. Were you the book-keeper of Benjamin Bullock's Sons up to the time of their failure?

A. I was.

100 Q. Did you have charge of their books subsequently, or their accounts?

A. I had charge of their books under instructions from the assignee until quite recently.

Q. How long had you been their book-keeper?

A. Since April 1st, 1868.

Q. Whose duty was it to enter bills receivable and the amounts received from discount, and all that, for them?

A. It was my duty. I was the principal book-keeper.

Q. From whom did you receive information?

A. As to any thing connected with cash matters or bills receivable from Mr. Joseph W. Bullock, who was the financial partner of the house.

Q. Did you knew anything the papers of Scheppers Brothers, and any memorandum of their account?

A. (Referring to papers marked E. Z. B. No. one and two.) These papers were given to me by Joseph W. Bullock, the financial partner of the house, as coming from the Corn Exchange Bank. I made a memorandum on it at the time I received it.

Q. Of the discount of the different papers of Scheppers as mentioned here?

A. Yes, sir; coming from Mr. Bullock as having come from the Corn Exchange Bank.

101 Q. (Book shown witness.) Is this the original bank book with the Corn Exchange Bank?

A. That is one of them.

Q. Do any of these mention in the paper marked E. Z. B. No. 2, appear entered in the bank book?

A. August 21st there is an entry in the bank book for the amount of the net proceeds of this discount, for the precise amount, in the same handwriting as the account; also on April 22d there is a similar entry of $14,060, in the handwriting of the person who made out the account. The same is true of the discount entered August 25th, which is in the same handwriting as that of the person who made out this account.

Q. Do you know whose handwriting it is?

A. I do not; I can't identify the handwriting.

Q. Some allusion has been made to a statement by yourself at a meeting of the creditors on the Sunday before the failure. Can you recall what was said, or the substance of it?

A. I can only say this: Not anticipating the failure of the house until Saturday, the 27th of September, learning then that the house would inevitably fail I went the next morning, being Sunday,
102 hurriedly over the books of the house to ascertain as far as I could the true position of the firm. I assumed that every bill, or every note, that had not been discounted for which we had received no benefit was still our property, except in two cases, and the only two cases where I knew we had given collateral. I therefore assumed that all the other notes were available by us for the payment of our debts, and without being able to give the details I made that statement in good faith to the creditors, believing it to be true.

Q. Did anybody from Scheppers' try to ascertain, with you, where those notes were?

A. Certainly; from Mr Scheppers and I think from every creditor, from yourself as representing one of them, from Mr. Landenberger's counsel, from every person whose paper we held, applications were made to me to tell where they were, who held these notes, in order that they might go and make some kind of negotiation for their protection; but certainly from the Scheppers. Mr. Brohm called on me several times. Mr. Emile Scheppers called on me once I am sure.

Q. Were you able to discover?

A. Not for some time. Immediately after the failure the
103 office was so crowded I couldn't attend to business. I was obliged to receive their instructions, make a memorandum, and place them upon my file and to attend to my work between six o'clock and midnight, and sometimes later.

Q. Could you give us the state of the account between Benjamin Bullock's Sons and Scheppers Brothers?

A. I have no statement of the account. I have a copy of the statement which I rendered them immediately after our suspension.

Q. Have you it with you?

A. No; it is in the letter copybook.

Q. Which was debtor to the other?

A. We would owe them on two different accounts—we would owe them from bills which we had borrowed of them for our own accommodation amounting to $100,000, and for the other paper which they had given us in excess of the wool we had purchased. That amount I am not prepared to say, and I can't say of my own knowledge. I would have to refer to the books.

Q. Was there anything paid on account of the $100,000?

A. No; we didn't pay any of it.

Q. Do you know whether it was reduced in any way?

104 A. Not by Benjamin Bullock's Sons; it was not.

Cross-examination by Mr. SHARPLESS:

Q. Can you say with certainty to what batch of notes those 17 belong?

A. I can, if you will allow me to get my day-books and ledger.

Q. Are they a part of the $100,000 of accommodation paper or some of the business notes referred to here?

A. I can say in answer to your question there are 20 notes received on June 24th, according to my book, each for $5,000.

Q. (Receipt produced and shown witness.) Is that the receipt for them; it is dated June 23d?

A. These notes for which the receipt was given June 23d, received on the 24th, is paper which we borrowed of them for our accommodation.

Q. Are these the notes mentioned? I refer to the 17 original notes held by the bank.

A. Not at all.

Q. What you have said is that this is a receipt for 20 notes borrowed for their accommodation. I now hand you 17 notes and ask you whether they are or not in this receipt?

A. No, sir; there is no question about that.

105 Q. What I want to get at is, under which contract Benjamin Bullock's Sons got those 17 notes?

A. It was a contract for about 800,000 pounds of wool renewed. Neither contract was fully completed. I have forgotten the figures; one was for 500,000 and the other for 300,000, or one was 300,000 and the other for 500,000, but whatever it was, neither contract was completed, and these notes came under that contract.

Q. They were given in the fulfillment of your part of the contract?

A. They were given in fulfillment of Scheppers' part of the contract.

Q. According to the contract the Scheppers were to give you the notes and you were to furnish the wool?

A. Yes, sir.

Q. Then it was business paper between between Scheppers Brothers and them?

A. Yes, sir. As I have said, we received these 17 notes under

the contract for buying wool. Under the receipt of August 1st, 1873, 12 of the $5,000 notes were given; the remaining five were received under the receipt for 20 promissory notes of $5,000, dated June 9th, 1873.

(Five papers under date of June 9th are marked with a red
106 mark, and the others are marked "S.")

Q. These notes to the amount of $100,000, which you got on June 9th, 1873, were they the first ones you got on account of the 800,000 pound contract for wool?

A. I don't know from memory; I can tell by looking at Scheppers' account.

Q. What I want to get at is this. June 9th, 1873, you got $100,000 on account, and August, 1873, you got $150,000 more on account. Of course those that we have mentioned in this first receipt were credited on account of your deliveries of wool first?

A. I am uncertain; I will look at that. I know we borrowed $100,000.

Q. But you delivered about half a million dollars' worth of wool on the $800,000 account. You say these notes were given by Scheppers in payment for that. Of course the notes included in the June receipt were to go first on account?

Mr. JOHNSON: Why do you say of course? You are testifying instead of the witness.

The WITNESS: All except the receipt of $100,000 of
107 June 24th were on account of the 800,000 pound contract.

Q. These payments in notes by Scheppers Brothers to Benjamin Bullock's Sons on account of this 800,000 pound contract of wool were made as these receipts show, and in the order in which these receipts run?

A. Yes, sir; there is no doubt but what they were.

Re-direct examination by Mr. JOHNSON:

Q. Which one of these 12 notes—which of the two—were not discounted? Refer to your books.

(Objected to, as witness's book can't show anything of the kind.)

Q. Can you tell from your books which of these notes were discounted and which were not?

A. I can.

Mr. BULLITT:

Q. You mean by that that you have your own knowledge of the fact, or that you get your information from somebody else?

A. I receive my information in this manner: I received daily reports of all the financial transactions of the house.

108 Q. Whom from?

A. From the financial partner, Joseph W. Bullock.

Q. Then your information came from him, did it not?

A. My information came from him in the first instance.

Q. And then you got no information that they were discounted?

A. I have another source. Secondly, I had to balance my cash every day and to keep the cash account right, and if a note has been discounted I would have known it.

Q. You received your information as to the discount from Mr. Joseph Bullock, did you not?

A. Yes, sir; always.

(Objected to.)

The COURT: Probably the witness can show that the books exhibit the fact that certain other of the notes were discounted, or all of them, and the books do not show that those were.

Mr. JOHNSON: That is all I want to know; which of these notes appear by your books to be discounted?

A. A note due February 14th, 1874, dated August 11th, 1873, for $5,000, drawn by Scheppers Brothers to the order of Benjamin
109 Bullock's Sons was not negotiated. By that I mean that Benjamin Bullock's Sons never got a cent for it. The next is a note dated August 25th, 1873, due February 25–28, for like amount. The number is not on the note. That was not discounted.

Mr. BULLITT: I suppose he means to say that the books say that they were not discounted.

Mr. JOHNSON: Yes, sir. (To the witness:) On what account were those twelve notes given?

A. For the purchase of wool, unquestionably.

Mr. SHARPLESS: They were given on the receipt.

Mr. JOHNSON: I offer in evidence bank book of Benjamin Bullock's Sons and the two discount statements by the bank.

Defendants close. Adjourned to Friday, 21st, at 10 a. m., 1881.

Corn Exchange Bank
110 *vs.* } U. S. C. C.
Scheppers et al.

PHILADELPHIA, *Friday, April 22nd*, 1881.

Present—Messrs. Sharpless and Bullitt, for plaintiff; Messrs. Morgan and John G. Johnson, for defendants.

SINNICKSON recalled and further examined:

By Mr. Sharpless:

Question. Please identify the two notes, if you can, that you say were not discounted?

Answer. Note dated August the 11th, 1873, drawn by Scheppers Brothers to the order of Benjamin Bullock's Sons, due February 11th–14th, 1874, for $5,000. Also note dated August 25th, 1873, to the order of Benjamin Bullock's Sons, six months, due February 25–28, 1874, for $5,000. Neither of those notes were ever discounted by Benjamin Bullock's Sons.

Q. [Notes shown to witness.] Are those the two notes?

A. They correspond in date.

Q. I ask you whether they are the two notes.
111 A. I can't say that those are precisely the notes.
Q. I can tell you that they are not the same two before you answer.
A. They were the two notes of August 11th, and there were 4 notes of August 25th.

The Court:

Q. Drawn in the same way and for the same amount?
A. Precisely. As I say, there were also four notes of August 25th.
Q. Drawn also similarly?
A. Yes, sir; now, I admit that one of those notes of August 11th is properly held by the Corn Exchange Bank.

The Court:

Q. But you are not asked about that.
A. But I am making an explanation. One of the notes of August 11th is properly held by the Corn Exchange Bank.

Mr. Sharpless:

Q. [Note shown witness.] Is that the note?
A. Either one of them. They are both of the same date and same amount; I can't tell which is which.
Q. Is it your opinion that that is the one?
A. Either one or the other; I couldn't tell you which.
Q. Can't you tell by the number?
A. No; they are not numbered.
Q. How about the note of August 25th?
111 A. There are four of the same date. Two were discounted by Elliott H. Collins and Company, and one by the Corn Exchange Bank, and one is held by the Corn Exchange Bank, not having been discounted.
Q. You have said here three times to day, and once yesterday, that the Corn Exchange Bank hadn't discounted those two notes.
A. I do. I say it the fourth time now.
Q. You stated to Mr. Bullitt that your only means of knowing that was that the discounts were not on your books, and hadn't been reported to you by Mr. Bullock?
A. They hadn't been reported by him or anybody else.
Q. Therefore you swear they were not discounted?
A. They were not.
Q. Where would the discount take place; wouldn't it be in the parlor of the Corn Exchange Bank, in all probability?
A. It would.
Q. You not being there, how can you undertake to say whether Mr. Bullock carried the two notes there and had them discounted or not?
A. I can for this reason: if I should suppose they were
112 discounted the inference is irresistable that he has got them discounted and appropriated the money to his own use,

and I don't wish to believe that unless I have very good reasons for believing it.

Q. Therefore your faith in a man's honesty is so strong that you take it upon yourself to swear that the notes were not discounted?

A. My books are honestly and faithfully kept, cash balanced every night, and I entered every cent of money in the Corn Exchange Bank that was entered. The gentleman who made these discounts entered them in our bank book. I know that they didn't enter these notes, for I had my bank book here. They didn't do it, and if they choose to give the person who got the discount money in bank notes and not in a check or anything that could be traced to him, or if they cognizant of a fraudulent operation, I had nothing to do with it.

Q. Here is a great lot of ifs. I only want it brought down to this—that you swear that they were not discounted because they are not on those books.

A. They are not on our books.

Mr. JOHNSON:

Q. As I understand it, there were four notes, which ma-
113 tured February 28th, of Scheppers Brothers to the order of Benjamin Bullock's Sons, and two which matured February 14. Four maturing at 25–28 and two 11–14?

A. Yes, sir.

Q. The four that matured February 25–28 were discounted, two by Elliott Collins and Company, you say?

A. Yes, sir.

Q. How about the other?

A. One was held by Elliott Collins and Company and presented before the auditor, but withdrawn, and one is held by the Corn Exchange Bank, which is the property of Henry Lewis, our attorney.

Q. Two were held by Elliott Collins and Company of the four. That left two; one of them discounted by the Corn Exchange Bank and one not discounted?

A. Precisely.

Q. There were two notes February 11–14 maturing?

A. Yes, sir.

Q. One of them discounted by the Corn Exchange Bank and the other not discounted at all?

A. That is correct.

Q. Here are two notes of the Corn Exchange Bank?

A. Yes, sir.

The COURT:

114 Q. He says he gets all his information from the books?

The WITNESS:

A. Yes, sir; from the books.

BROHM recalled and further examined by Mr. JOHNSON:

Q. How many notes were there maturing February 11–14 of Scheppers Brothers to Benjamin Bullock's Sons?

A. Only two notes.

Q. For what amount?

A. Each for $5,000.

Q. Have you taken back either of those two notes?

A. No, sir; I can identify them by the numbers. One was No. 1274 and the other 1275, and those are the only two notes issued by us due that day, February 11–14.

Q. How many notes maturing February 25th–28th were there of Scheppers Brothers?

A. Four.

Q. Do you know what became of two of them?

A. Two have come back to us.

Q. Discounted through whom?

A. Elliott Collins and Company.

Q. State the number of the other two.

A. 1286 and 1287, by my notes.

Testimony on behalf of plaintiff in rebuttal.

H. P. SHELKY sworn and examined by Mr. BULLITT:

Q. What is your business?

115 A. Cashier of the Corn Exchange National Bank, corner Second and Chestnut streets in this city.

Q. How long have you been cashier?

A. Since October, 1866.

Q. Had you been in the bank before as clerk?

A. I have since November, 1862.

Q. Did you know the members of the firm of Benjamin Bullock's Sons in 1873?

A. I did.

Q. You were then cashier of the bank?

A. I was.

Q. It has been stated that there was a discount of 15 notes of the Benjamin Bullock's Sons by the Corn Exchange Bank. Do you recollect that transaction or those transactions?

A. There were several transactions; 15 notes of Scheppers Brothers with Bullock's endorsement were discounted by the bank.

Q. Were those 15 notes held by the bank in the month of September, 1873?

A. Yes, sir.

Q. In making the discount describe how it was done. I mean with reference to the entries in the books and the credits that were given. To whose credit was the money passed?

A. The money was passed to the credit of Benjamin Bullock's Sons.

116 Q. What is the amount, taking the notes for $5,000 that had three months to run? How did you discount it and how did you make your entry?

Q. We ascertained the due dates and counted the date from the time of the discount to the date of maturity, and calculated the interest at six per cent.

Q. How did you make the entry in your book?

A. Our discount ledger is always ruled for the express purpose of carrying out discount.

Q. Did you enter the credit in any books of Benjamin Bullock's Sons?

A. I entered the credit in the bank book or pass book of Benjamin Bullock's Sons.

Q. In charging extra interest upon those notes, how did you charge that, or how was it entered; I mean over and above six per cent?

A. Over and above six per cent. the amount is ascertained and deducted from the net amount at six per cent.

The COURT: You have already stated that you charged six per cent. from the date to the maturity of the note and credited him with the balance.

Mr. BULLITT: Then I ask him where there was a charge of more than six per cent. how that was entered in the books. State how it was done.

117 A. Having ascertained the net amount of discount at six per cent. we ascertained the amount of interest at the excess of six per cent., which we deduct from the net amount at six per cent.

The COURT: Left after deducting six per cent.?

A. Yes, sir.

Mr. BULLITT:

Q. What was the balance that you gave credit to Benjamin Bullock Sons for? Was it for the amount left after deducting six per cent and the extra, or was it the six?

A. After deducting both; the six per cent. and the excess of six per cent.

Q. Then you gave credit in the book for the balance that was left?

A. Yes, sir.

Q. These 15 notes are the notes that have been spoken of yesterday on the stand by several witnesses. You heard them described yesterday when you were in court?

A. Yes, sir.

Q. Two notes have been spoken of, $5,000 each, which were left by Mr. Joseph Bullock with the bank in the month of September, 1873. Can you identify those notes (handing notes to witness)?

A. Those are the two notes.

Q. Please describe as nearly as you can exactly what oc-
118 curred between Mr. Joseph Bullock and yourself at the time these notes were left in the bank.

A. On the day of Jay Cooke's failure, 17th of September, 1873, Joseph Bullock came to the bank, took off his hat and threw out a number of notes from his hat, which he handed to me, with this remark, "Harry, put these with the rest of my collaterals." He always called me Harry. I turned them over and found that they were not endorsed. I then handed them to Mr. Bullock and asked him to endorse them, which he did in the bank. I then handed them to Mr. Marshall, the discount clerk, to take care of them.

Q. Then those notes remained in the possession of the bank from that time to this?

A. They have.

Q. Was there any entry made in the books of the bank of those notes?

A. There was.

Q. In what book? I mean at the time. I want to know whether there was any memorandum made in the books of the bank of those two notes at the time when they came into the bank?

A. Yes, sir.

Q. On that day or the next?

A. On the 17th day of September.

119 Q. Have you that book in court?

A. That book is in court.

Q. Please produce it.

(Witness produces said book.)

Q. What book is that?

A. It is what we call our collateral book.

Q. Who keeps it?

A. Mr. Marshall, the discount clerk.

Q. Whose handwriting is that?

A. It is his handwriting.

Mr. BULLITT:

That entry is this on book marked Collateral Corn Exchange National Bank. At the head of the book is 1873, then some entries under August. Then comes September 17th, "B" Bullock's Sons, additional collateral. Page 23, Russell Dart, president, giving notes, $5,000, $5,000. Again, Russell Dart, president, five notes due, &c., $25,000. Then, J. Reithsnyder, $1,974.63 and $1,974.62. Then, M. Landenberger, $5,000. Then Scheppers Brothers, $5,000; Scheppers Brothers, $5,000.

Q. I see some other collaterals there also stated. Were those left at the same time?

A. All at the same time.

Q. What was the indebtedness of Benjamin Bullock's Sons to the bank at that time?

A. Aside from endorsement?

Q. I want it all. If there was a call loan state what it was.
120 A. There was a call loan of $50,000.
Q. When was that call loan made?
A. On the 30th of December, 1872. I think it was on the 30th. It was in the latter part of December, 1872.
Q. That is, the whole amount of $5,000 was then due?
A. Yes, sir; there was a call loan made at that time.
Q. That is, I mean to say, it continued running. The $50,000 was unpaid at that time—the 17th of September, 1873?
A. Yes, sir.
Q. What discount had Benjamin Bullock's Sons in the bank upon which the were endorsed?
A. That I can't tell you.
Q. There was this amount of $75,000 of which you have spoken?
A. Yes, sir.
Q. Has that call loan been paid?
A. Not entirely.
Q. What is the balance due?
A. There is a balance due of about $25,000.

Cross-examination by Mr. JOHNSON:

Q. You are sure that this entry was made on the 17th day of September?
A. So far as I am able to judge by that, yes.
Q. What are you willing to pledge your oath to with regard to the date? You spoke of Jay Cooke's failure. I want
121 to know whether you will pledge yourself that this entry was made on the 17th or 18th or 19th of September?
A. To the best of my recollection it was made on the 17th of September.
Q. If you say to the best of your recollection, is there any element of doubt in your recollection?
A. I don't know that there is.
Q. Why don't you say positively? Did you have any best of your recollection or any uncertainty as to the date in your examination-in-chief?
A. No, sir.
Q. Have you any now?
A. I have not.
Q. Then may I say that you positively testify that this entry was made on the 17th of September; the whole of this entry as it stands?
A. As far as I am able to say.
Q. Did you see it made?
A. I did not.
Q. When first did you see the entry after the 17th of September?
A. I don't think I saw the entry until the latter part of September; I can't fix the date.

Q. Why then have you testified anything with regard to the time when this entry was made?

A. I have testified from documentary evidence.

Q. Did you state to the jury a word about documentary evidence as a basis of your testimony?

122 A. No, sir.

Q. Now, I ask you why you swore positively in your examination-in-chief that this entry was made on the 17th day of September, when you don't know anything about it, and didn't see it until the latter part of September?

A. Because I took the date from the book; my clerk had entered it there.

Q. Do you know nothing at all about this entry excepting that you see it here in the handwriting of your clerk?

A. No, sir; I can't say that I do know anything about the entry, except knowing it to be in my clerk's handwriting.

Q. Then you don't know at all when this entry was made?

A. Only judging from the date fixed to it.

Q. And apart from that you know nothing?

A. Not about the entry.

Q. When was the entry made on the following page, judging from the handwriting?

A. On the 4th of September.

Q. Will you tell me why it is that the last preceding entry is September 6th, the next succeeding entry September 4th, and September is jammed in between 4th and 6th?

A. Because he carried over from 23. He had the list of collaterals on page 23, and he found just room enough there to insert

123 what additional collateral was given.

Q. Then it was because there was room there that he inserted it, was it?

A. Yes, sir.

Q. If you hadn't made any entry, wasn't there room after September 16th to have made that entry?

A. Yes, sir; I suppose there was.

Q. Why didn't he put it there?

A. He will have to answer that question; I can't answer for his conduct.

Q. It is out of its order in the book, isn't it?

A. Yes, sir.

Q. Jammed in on the half lines in the book, isn't it?

A. Yes, sir.

Q. Point me to another entry that is crowded in in that way from beginning to end in your whole collateral book—not merely where there are one or two interlineations, but crowded from beginning to end?

A. There is one (pointing to page 103).

Q. Will you point me to any other entry of a like character in your judgment?

A. I refer to pages 148 and 160.

Q. Is this book a daily register of your transactions with collaterals?

A. Collaterals are registered there.

Q. Are the registered daily as the collaterals occur?

A. Unless there is some unusual delay on account of the
124 excess of business.

Q. But they will appear in order?

A. I am not the party to answer that question, as I don't keep the book.

Q. But it is kept under your supervision, isn't it?

A. No, sir; it is not, any further than the general supervision of the affairs of the bank.

Q. Don't you order the entries to be made—do you usually?

A. No, sir.

Q. Then you have nothing to do with the ordering of the entries in the usual course of business?

A. Not the entering of collaterals. Collaterals are simply handed to the clerk whose business it is to enter them.

Q. Do you know enough about the business of the bank to know whether that is meant to be daily registered from day to day in your business in collaterals?

A. It is; yes, sir.

Q. Is it the usual course of your business to enter these collaterals from day to day as they are received?

A. They should be entered from day to day.

Q. Is that the usual course of business to so enter them?

A. It is.

125 Q. Is it usual to introduce a transaction occurring eleven days later before one occurring eleven days earlier?

A. Yes, sir.

Q. Is it usual to do so?

A. Yes, sir; here is one (indicating), May 13th, May 2nd, May 6th, and May 13th.

Q. That is the transaction on page 23?

A. Yes, sir.

Q. Can you point me to another?

A. Yes, sir; May 8th to April 25th, G. W. Huntzinger & Company, page 21; also page 19.

Q. Is it usual to make the date which is affixed to the transaction the date of the occurrence of the transaction?

A. No, sir; it is the date of the receipt of the collateral.

Q. Then the date which is put to the transaction is the date of the receipt of the collaterals, is it?

A. Yes, sir; it ought to be.

Q. Therefore in entering this transaction September 17th, that expresses the date of the receipt of the collaterals, does it?

A. Yes, sir; it should.

Q. You have testified to the date of this occurrence from this date in the book, have you?

A. Yes, sir.

126 Re-direct examination by Mr. BULLITT:

Q. I understand you to say in answer to a question of Mr. Johnson that you handed the collaterals to the clerk who made the entry?

A. Yes, sir.

Q. You didn't see the entry made yourself in the book?

A. I didn't.

Q. When you spoke of its being entered on the 17th you spoke from the entry itself?

A. I did.

Q. That is all you know about it?

A. I know that I got the collaterals, and the notes were handed to me.

Q. You identify the time, as I understand you, at which you received the collaterals, as being at the time of Jay Cooke's failure, whatever that date was?

A. Yes, sir; at that time.

Mr. JOHNSON:

Q. I thought you testified to the date from the date you saw in the book?

A. I have just said so.

WILLIAM M. C. MARSHALL affirmed and examined.

By Mr. BULLITT:

Question. Were you clerk in the Corn Exchange Bank in the month of September, 1873?

127 Answer. Yes, sir.

Q. Are you so still?

A. Yes, sir.

Q. Had you charge of the book referred to by the prior witness at the time he speaks of?

A. Yes, sir.

Q. Turn to that entry and state whether you made it or not?

A. I made it.

Q. Have you any personal recollection as to the time at which you made the entry?

A. Only from the date of this book.

Q. State whether you received those collaterals or not from Mr. Schelky as cashier?

A. Yes, sir, I received them.

Q. When you received them, what did you do with them?

A. When the cashier handed them to me I put them in an envel-

ope, and marked the envelope with the name and the date I received them.

Q. Then what do you do?

A. If I have time that day I put them on.

Q. If you havn't time that day what do you do?

A. I keep them until I have leisure to do it.

Q. Then you can't tell from that whether you made the entries on that day or not?

A. I couldn't say on that day.

128 Q. Where did you get the date which you put into the book there?

A. I would get it off my envelope.

Q. Did the cashier give you any directions when handed you those collaterals?

A. Those collaterals he handed me as additional collaterals for a loan of $50,000. He handed them to me, as far as I can recollect, and said they were additional collaterals for a loan of $50,000.

Q. Who handed them to you?

A. Mr. Scheatky.

Mr. JOHNSON: I object to any question of what occurred between the witness and cashier.

The COURT: It is a part of the res gestæ; part of the transaction.

Mr. BULLITT:

Q. Is it your recollection that you are giving when you state that that was what the cashier said to you; have you personal recollection of it, or do you state only from what you find?

A. I speak from memory and the transactions on my book.

Q. Do you recollect the time of the failure of Jay Cooke and Company?

A. I don't recollect the date. I know about the time—in September.

129 Q. Was this transaction after or before, or what is your recollection with reference to the time of the failure of Jay Cooke & Company?

A. I think it was before the failure of Jay Cooke & Company.

Q. How long was it before or after the failure of Benjamin Bullock's Sons, or have you any recollection on that subject?

A. It was before.

Q. Can you state now from memory whether that entry was made on the 17th of September or whether it was made afterwards; have you any recollection on that subject?

A. No, sir; I made the entry by my envelope.

Q. State why it was that that entry seems to have been put there after the entry of the 6th of September?

A. I had no regularity in carrying them out for date; I would take the top envelopes and go by the dates.

Q. Why is it that your books were not kept in regular order from

day to day, but that you make some entries anterior in date to others?

A. I don't have time from day to day.

Q. You mean that you havn't time to make them the very day when they are received?

A. No, sir.

Q. How long a time elapses ordinarily before you do
130 make the entries?

A. Within three or four days. Sometimes about the middle of the week after I have my bills discounted. I generally take either Wednesday or Thursday to put them on. Those are my light days.

Q. From the time that these notes were handed to you by the cashier, where were they; I mean from that time on?

A. They were in my possession. I registered them and then I passed them to the cashier. I would time them to see that there were none coming due within 30 days.

Q. Then you handed them back to the cashier?

A. Yes, sir.

Cross-examination by Mr. JOHNSON:

Q. What date do you put in front of the entry—the date of the handing of the collaterals?

A. Yes, sir.

Q. Therefore you would infer from that—that is the 17th—that that was the date?

A. Yes, sir.

Q. You get your only recollection of date from that fact?

A. Yes, sir.

Q. And then you make the entry the day or the day after-
131 wards; when you enter it you enter it as of the day of the transaction?

A. Yes, sir.

Q. Whose handwriting is page 42?

A. My handwriting.

Q. Whose handwriting are the entries of August 26th on page 43?

A. Mine.

Q. Whose handwriting is August 29 and September 6th, on page 43?

A. Part is the cashier, I think.

Q. September 6th is whose?

A. It looks like the cashier's.

Q. Whose handwriting are the entries on page 44?

A. My handwriting.

Q. In whose handwriting are the entries page 46?

A. Mine.

Q. Why did you not enter that transaction after September 16th?

A. This 19th may have been on top of my bundle.

Q. How will that explain it?

A. I commence it first.

Q. After you finished the top of the bundle and came to the bottom of the bundle, then if September 17th was at the bottom it would appear after 19th?

132 A. The reason this transaction was done, I had a collateral at page 23 so as to keep them close together. I turned over and hunted a vacant place.

Q. You remember that, do you; hunting for a vacant place so as to keep them close together?

A. I judge that.

Q. Have you any recollection about it?

A. No positive recollection.

Q. Is that the only explanation that you can give why it don't appear after the transactions of September 16?

A. Yes, sir.

Q. Will you find any other case in your book where you put a transaction out of its date in order to get it nearer another transaction?

A. No, sir; the others occur in regular order.

Q. Show me where transaction is put ahead of the date of the entry?

A. August 26th is put after September 5th and 3rd.

Q. Is that put ahead of September 5th or 3rd? I am asking you to point out not a transaction where an earlier date comes later, but where a later date is put earlier and ahead?

A. Here is one, H. U. Catherwood, on page 42, September 3rd.

133 Q. That is a later transaction put ahead, is it?

A. Yes, sir.

Q. Isn't the fact that August 29th on page 43 is an earlier transaction put later?

A. That is not my handwriting.

Q. Therefore you can't explain about that?

A. No, sir.

Q. Take any example occurring in your own handwriting and show me a single case, not where an entry is put after its date, but where it is put ahead of its date.

A. I refer to March 24th, page 63.

Q. Isn't that a case where the transaction is entered after its date?

A. No, sir.

Q. Do you mean to say that there was not an entry of March 27th on page 62?

A. Yes, sir.

Q. Then isn't March 24th, which is entered on page 63, there being the entry of March 27th and 8th on 62, entered after its date?

A. No, sir; that is a long entry of collaterals, and there would not be room on page 62 to enter them.

134 Q. Do you think or not that the entries of March 27th on page 62 and March 24th on page 63 were entered simultaneously?

A. I think they were entered the same day.

Q. You say you enter them from your file accordingly as they appear there?

A. Yes, sir.

Q. That will explain that, won't it?

A. Yes, sir; I put that on that page because there wasn't room enough there.

Q. At the time you must have known that there was not room here before you wrote the 27th and 28th of March on 62; therefore you must have been making the entries of March 27th and 28th and March 24th from a file before you at one time, must you not, to have ascertained that?

A. They might not be in regular order.

Q. And you would enter them as they came?

A. Yes, sir.

Q. That will explain that these items have arisen from your making simultaneous entries from a pile of papers which were not in regular order, won't it? Now, do you think with regard to this transaction on page 43 that the transaction of August 29th,
135 September 6th, September 17th, 4th, 5th, and 6th were all entered from one file at one time?

A. No, sir.

Q. Point me to a single entry in your book within two or three years, if you please, of these transactions, where, in entering a pile of bills at one time, or of collaterals, you entered a transaction ahead of its date instead of after it?

(Witness is requested by counsel to withdraw and make examination.)

DELL NOBLIT, sworn and examined.

By Mr. BULLITT:

Q. You are president of the Corn Exchange Bank, and were in 1873?

A. Yes, sir.

Q. Had you any personal knowledge of these notes being left by Mr. Bullock with Mr. Schaetky?

A. I had no personal knowledge.

Q. Did you see the notes yourself?

A. After they were in possession of the bank I did.

Q. As nearly as you can recollect, about what time was it that you first knew they were in possession of the bank?

A. I didn't charge my memory with it at all. I only knew that they were there. It was some time about the time of the fail-
136 ure of Jay Cooke. My knowledge in reference to that collateral, why it was brought into the bank——

(Objected to.)

Q. I understand you say that your present recollection is that your first knowledge of their being there was at or about the time of the failure of Jay Cooke?

A. Yes, sir.

Q. You represented the bank in the subsequent dealings with Scheppers Brothers about these notes; did you not?

A. Yes, sir.

Q. And you made adjustments or settlements?

A. Yes, sir.

Q. These notes were a part of those which were embraced in that settlement which you have referred to?

A. They were.

Cross-examination by Mr. JOHNSON:

Q. I understand that you have no personal knowledge of the giving of these notes at all?

A. No, sir.

Q. Did you not make a statement with regard to the consideration of these notes to Mr. Henry Lewis, or in his presence, yesterday?

A. Not to my knowledge.

137 Q. Did you not say in the presence of Mr. Henry Lewis that you had given the consideration of these notes to Joseph Bullock?

A. I did not.

Q. Did you say anything about it?

A. Nothing at all in reference to the consideration.

Q. What did you say?

A. I don't remember; there was no conversation in reference to this or in this matter excepting that it appeared that they were making a big case out of this; nothing else.

MARSHALL recalled and examined by Mr. JOHNSON:

Q. Are you able to answer the question I put you?

A. I refer to a transaction on page 38 and 39.

Q. That is the transaction of August 4th and July 31st; let me ask you whether all of those were not entered from a pile of bills in front of you at the time, and entered in the order as the bills turned up?

A. It may have been; I can't remember now.

Q. Isn't it probable?

A. Yes, sir.

Q. Now, my question is, not where you have a pile of bills before you and are entering them as they come, which may make a few days ahead of the other, but my question is, where you are

138 not making simultaneous entries, and where you have entered a transaction ahead of the prior transaction in your book? You can step aside and make a search.

Defendant's Testimony in Rebuttal.

BULLOCK recalled and examined by Mr. JOHNSON:

Q. Mr. Schetky has sworn at or about the time of Jay Cooke's failure, I think on the 17th of September, you handed to him additional collaterals, including these Scheppers notes; is that true?

A. Mr Schaetky is mistaken. J. Cooke & Company failed on September 18th. The money market was quiet and serene. There was no trouble.

Q. Did you hand him at any time these collaterals under the circumstances that he speaks of?

A. There also he is mistaken. I was in the habit of delivering him paper in an envelope until such time as I would call for it in the morning. Never as collateral. I never was asked for a collateral.

Q. Did you hand him these collaterals under any circumstances on the day he states, or any other?

A. I could not, for the notes I hadn't in my possession.

139 Q. Did you or did you not?

A. I did not.

Cross-examination by BULLITT:

Q. You stated that you hadn't the notes in your possession. Did you ever call on the bank to surrender to you these notes? I refer to the notes of $5,000 each of Scheppers Brothers, to the order of Benjamin Bullock's Sons, which we have been talking about, the Mr. Schaetky says were up as collaterals?

A. I have no knowledge of that.

Q. Did you ever call on the bank, I say, to return them to you?

A. No, sir; I only gave them on Thursday, and we failed—well, virtually we failed on Saturday, but was announced Monday.

Q. You gave them when?

A. On Thursday.

Q. At the same time you gave them these notes of Russell Dart, president, and of Reithsnyder & Company; did you or did you not?

A. Well, I can't designate or recollect all the paper I had in that envelope. I think I had Reithsnyder's to my knowledge.

Q. Do you recollect having the Glenham, or Russell Dart?

140 A. Yes, sir; I think I had some Glenham. It has been 7 and a half years ago.

Q. Therefore you can't now speak with accuracy?

A. I can speak with regard to giving them additional collaterals, for I know that I required all the papers I could get hold of and when I left that paper there on Thursday. I went to my counsel on Friday morning and told him we were going to be in trouble. My advices were from New York that they required so much money. Messrs. Scheppers wanted $30,000; Glenham Woolen Company wanted about $25,000; Martin Landenberger wanted $50,000; I saw all that staring me, and I went to my counsel and told him I would

have to succumb; after seeing my counsel I never went back after these collaterals.

Q. You left them there?

A. I left them.

Q. You signed an agreement; (paper shown witness) that is your handwriting?

A. Yes, sir.

Q. Do you recollect signing that paper?

A. I signed it.

Q. Do you recollect the fact that the claim of the Corn Exchange Bank against Scheppers Brothers embraced those two notes
141 referred to?

A. I do not.

Q. Did you never make inquiry as to what had been done with those collaterals?

A. I didn't, because I was absent from the city.

Q. You never did make any inquiry?

A. No, sir.

Q. And never have from that day to this?

A. I never have; I understood they had a settlement.

Q. Did you ever make any effort to obtain from the bank any collaterals mentioned as being left by you at that time, either Russell Dart, or Reithsnyder or Landenberger?

A. Not after our failure.

The COURT:

Q. Was it your habit to endorse bank paper and commercial paper before you came to use it?

A. Yes, sir; because I wanted to get the money soon after I required it.

Q. You endorsed it without knowing?

A. Without knowing where I would place it.

Q. Therefore you endorsed and carried it about with you endorsed?

A. Yes, sir.

Mr. JOHNSON:

142 Q. What was the reason you didn't make any inquiry? Thursday you left this envelope with the papers in at the bank, and you never went there after it since, you say. Friday, virtually you knew you were having trouble?

A. After I had consulted with my counsel as to the best course to pursue.

Q. Saturday you practically failed. Sunday you had your conference at Mr. Bullitt's, and Monday the failure was announced. Now did you take any charge of your business affairs after that time?

A. I think on Monday—if I had got to make an exposure about it—I will be frank about it—I will say I went to the office and

asked our cashier to give me some money for personal expenses. He said our counsel ordered him to inform me not to draw any checks. I then went over to my counsel.

Q. Did you take any charge of your affairs after that?

A. I did not.

THOMAS SINNICKSON recalled and further examined.

By Mr. JOHNSON:

Q. Here is an entry of September 17th; collaterals re-
143 ceived then; two notes—J. Reithsnyder & Company due 15–18 for $1,974.63 and $1,974.62. Please state when those notes were received by the house from Reithsnyder?

A. We received them on September 25th, 1873, due December 15–18. They were received in settlement of a bill.

Q. Have you any corroboration of that in your books?

A. My books confirm this entry.

Q. What were they received for?

A. On September 16th we sold Reithsnyder & Co. a bill amounting to $3,981.65.

Q. How was it settled?

A. It was settled by the two notes in question just recited less 54 sacks, amounting to $32.40.

Q. How is the account balanced on your books—under what date and in what way?

A. It was settled September 25th, as I say, by the two notes in question at 90 days.

Cross-examination by Mr. BULLITT:

Q. Where were those written?

A. They were sent to me. I sent a statement of the account.

Q. That was the date upon which you sent it?

A. No, sir; that is the date I received them. I probably
144 sent them on the 16th or 17th, and received them as soon as they had a chance to examine the wool and see that the weight held out. It would take several days to do that.

Q. You sent the account then?

A. I presume I sent it on the date, September 16th or 17th; I am always very prompt about that.

Q. You are very prompt in sending for the settlement?

A. Yes, sir.

Q. You sent for the notes about the time that the transaction was made?

A. Yes, sir.

Q. Which was the 16th?

A. Yes, sir.

Q. Why do you say that you didn't receive them until the 25th of September?

A. Because my entry on my bill-book is as accurate as any entry

ever made; as accurate as any cash entry; I am always careful in making entries of my bills receivable and payable to put them on my book on the precise day on which they were received; I consider them just as sacred as a cash entry.

Q. Then you feel confident that you didn't receive those notes before the 25th?

A. I am positive I didn't; I am positive I didn't make that
145 entry until the note was in my hands; I am positive I gave a receipt for the note; that is, made that settlement.

MARSHALL recalled, and further examined by Mr. JOHNSON:

Q. Have you been able to find any such entry as I asked you about?

A. No, sir.

SCHAETKY recalled, and further examined by Mr. BULLITT:

Q. Please turn to the entry which has been in question; Mr. Sennickson has said that the notes of Reithsnyder, which you will find there, were not received by Benjamin Bullock's Sons until the 25th of September; looking at that entry can you explain how that entry comes to be made in that way consistently with the statement that the notes were not made until the 25th of September; do you know how that entry came to be made there; have you any knowledge of it at all, or do you know anything about it?

A. I only know that it was made by Mr. Marshall, and I know that about the time of Jay Cooke's failure I received several
146 notes from Mr. Bullock—loose notes; it may not have been the whole of this batch of notes that I received at that time; as I testified before, I won't be positive about the 17th, except because I find that date here.

Q. That is the only reason why you state it was the 17th?

A. Yes, sir; about the time of Jay Cooke's failure; a long time has elapsed since, and as officer of the bank I have so many things passing through my brain I cannot remember everything of that character as distinctly as I would like to.

Cross-examination by Mr. JOHNSON:

Q. What is your suggestion; that you got the Reithsnyder notes after you got the Scheppers notes?

A. No, sir; I judge that came at the same time; there is a Landenberger note here to.

Q. Then is your suggestion that you got the Scheppers notes at the same time as you got the Reithsnyders note?

A. That is my suggestion of this entry here.

Q. Then as an expert if you got the Reithsnyder notes on
147 the 25th you could not have got the Scheppers notes before the 25th, could you?

A. No, sir.

Q. Then how did Jay Cooke's failure that day affect this question, and you remembering it by Jay Cooke's failure on that day?

A. I say it was about the time of Jay Cooke's failure.

Q. Then it may have been on the 25th day of September, which was Thursday, the day that Mr. Bullock says that he left this with an envelope there this last time, may it not?

A. He didn't leave the envelope there the last time. These that I allude to here were not in an envelope.

Q. Why is the date of September 17th put there if the real date was September 25th?

A. My theory is this: that the first three items here were received on the 17th, and at a subsequent date the lower items were received, and no date has been entered. These have been crowded, in which the exception of receiving more collaterals, as we were continually.

Q. Have you ever sworn to any suggestion that there were two occasions when Joseph Bullock came there and deposited collaterals?

148 A. No, sir; I hav'n't sworn to that.

Q. Were there two occasions when he came there and desposited collaterals?

A. Yes, sir; dozens of them.

Q. Two different occasions when he came there and deposited collaterals on these loans?

A. Yes, sir; on this $50,000 loan.

Q. When was the first?

A. When he made the loan.

Q. When was the second?

A. On the 17th.

Q. Was there a third occasion?

A. I can't sw*are* positively to that, but I suppose that there was from the fact that these lower Scheppers notes were the last ones received, and I received them myself.

Q. Which of these transactions do you know about, the first or second, under the date of September 17th?

A. I know about the lower notes here, I am positive.

Q. Hav'n't you sworn that on this date he handed you Glenham notes?

A. No, sir; I didn't say a word about the Glenham.

Q. What did you say were the collaterals which he handed you on this day about the day of Jay Cooke's failure?

149 A. I said Mr. Bullock handed me a number of notes and said to me, "Harry, throw these in with my collaterals." I asked him to endorse them; he endorsed them; I took them from him and handed them to the clerk to take charge of them; I didn't mention any names.

Q. If there were two transactions, who could have received the first transaction?

A. I might have received them or Mr. Marshall might have received them.

Q. Do you remember?

A. I don't remember receiving them—that is, those Dart ones; still, I may have received them; but I remember these Reithsnyder's and Scheppers' notes distinctly.

Q. Will you pledge yourself to the jury that there were two different transactions after the original one, or whether there was but one?

A. I have no recollection of seeing these first notes—the Dart's—on this entry at all; the others I have.

Q. Mr. Dell Noblitt has sworn that he knows nothing personal about the collaterals. Who could possibly have received the collaterals but yourself?

A. Mr. Marshall, the discount clerk.

Q. Directly from Mr. Bullock?

A. Yes, sir.

150 Q. Do you know of any transaction where he received them direct from Mr. Bullock?

A. I can't state any particular one now, but I know a number of times Mr. Bullock has brought him collaterals and handed them to him.

Q. Collaterals for what?

A. For loans.

Q. Find a loan in your books.

A. I don't know that I can find one here.

Q. Find a single loan on your books where Mr. Bullock came and handed collaterals to Mr. Marshall directly.

A. I am not going to testify to anything of the kind, because I can't swear positively.

Q. You have sworn positively to it, and now I want you to verify it.

The witness was requested to retire and furnish said statement.

Mr. Johnson produced book of Reithsnyder, in which, under date of September 25th, there appears the entry: "Benjamin Bullock's Sons, dr., to bills payable for the two notes referred to."

ISRAEL REITHSNYDER sworn and examined by Mr. JOHNSON:

Q. Is this your day book?

151 A. Yes, sir; it was in 1872–'73.

Q. Where did it come from?

A. From our store.

Cross-examined by Mr. BULLITT:

Q. There is an entry there of two notes given to Benjamin Bullock's Sons on the 25th of September. Have you any recollection in regard to that transaction personally?

A. I have not; it is in the handwriting of my partner.

Q. All you know about it is what you find in the books?

A. That is all—I recognize his handwriting.

Schaetky being recalled, states: "I cannot point to any other entry of collateral handed to Mr. Marshall by Mr. Bullock."

MARSHALL recalled and examined by Mr. BULLITT:

Q. Having heard what has been said about these notes of Reithsynder's being not given until the 25th of September, can you state how you came to make the entry under date of the 17th of September?

A. I have received the Dart notes.

Q. State your recollection, if you have any, on the subject.

A. I have no recollection positively.

152 Q. Have you any recollection of making the entry, except from seeing it now in the book; do you recollect the transaction of any of those notes—I mean have you a recollection of those notes being in the bank; and if so, when do you first remember them independently of the entry?

A. I remember when I was called on to get out the notes of Scheppers Brothers.

Q. What was that?

A. I don't recollect exactly what time. It was after their failure or after the failure of Benjamin Bullock's Sons. I was told to get out the Scheppers notes and see what amount we had.

Q. How long after the failure, if you recollect?

A. I don't know; it couldn't have been very long. The settlement was made, I think, in December.

Q. It was with a view to that settlement, was it?

A. Yes, sir.

Mr. JOHNSON:

Q. It was some years afterwards, wasn't it?

A. No, sir.

Q. Did you not testify some years afterwards?

A. No, sir.

Q. Did you not testify in the year 1875?

A. No, sir.

Both parties close.

Whereupon the learned judge charges the jury as follows:

153 And thereupon the counsel for the said plaintiffs did then and there except to the aforesaid charge and opinion of said court; so much and such portions of the aforesaid charge and opinion of the said court as appears between [ ] and numbered 1,1, 2,2, 3,3, 4,4, 5,5, and 6,6; and inasmuch as the said charge and opinion so excepted to do not appear upon the record, the said counsel for the said plaintiffs did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the

aforesaid judge at the request of the said counsel for the plaintiffs, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 26th day of April, A. D. 1881.

(Signed) WM. BUTLER. [L. S.]

154 (Endorsed:) C. C. U. S., e. d. Pa.; The Corn Exchange National Bank *vs.* Scheppers Bros.; Bill of Exceptions ex parte plaintiff; presented May 6th, 1881., M. B. Satisfactory to us; Morgan & Lewis, for def'ts, July 13, 1881. Filed July 13, 1881. Sharpless, Bullitt.

155 UNITED STATES OF AMERICA, } *ss.*
Eastern district of Pennsylvania, }

I, Samuel Bell, clerk of the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the record and proceedings in a certain therein lately depending betweeen the Corn Exchange National Bank, plaintiff, and Scheppers et. al., defendants.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Circuit Court at Philadelphia, this 26th day of August, A. D. 1881, and in the 106th year of independence of the United States.

SAMUEL BELL.

[SEAL.] *Clerk Circuit Court U. S., east. dist. of Penna.*

156 *Assignments of Error.*

In the Supreme Court of the United States, to October term, 1881.

The Corn Exchange National Bank, a corporation, &c., plaintiff in error and below,
vs.
Emile Scheppers and Edouard Scheppers, sued with Francois Scheppers. } No. —.

1. The learned judge who tried the cause below erred in charging the jury in the words following, to wit: "In answer to this case, the defendants show that in 1873 they drew a very large number of promissory notes to the order of Benjamin Bullock's Sons, to whom they were delivered, to be used in purchasing wool for defendants' use, Bullock's Sons procuring the notes to be discounted and applying the proceeds to such purchases. Subsequently Bullock's Sons, who were transacting business on their own account, also failed, having received a large amount of Scheppers Brothers' paper which they had not so procured to be discounted, and applied to the purchase of wool, as it was their duty to do."

2. The same learned judge also erred in charging the jury in the

words following, to wit: "In the settlement of Bullock's Sons'
157 estate it was discovered that *two of the seventeen notes held* by the Corn Exchange Bank, which Scheppers Brothers had renewed on the extension granted them, *had not been discounted by* the bank, and the proceeds applied to the defendants' use, as they supposed when the renewals were executed."

3. The same learned judge also erred in charging the jury in the words following, to wit: "Bullock's Sons had *no right* to use the notes received from Scheppers Brothers *for any other purpose than the purchase of wool*, or to procure them to be discounted so that the proceeds might be applied to this object."

4. The same learned judge also erred in charging the jury in the words following, to wit: "If Bullock's Sons in disregard of their duty transferred them to another for their [Bullock's Sons] own use, the transferee having no notice of the fraud, would possess a good title and could recover upon the notes."

5. The same larned judge also erred in charging the jury in the words following, to wit: "He" [meaning the witness Joseph W. Bullock] "had no right to use the notes in question for his own benefit; he held them simply as agent or commission merchant to employ them or their proceeds for the *defendants' use*."

158 5. The same learned judge also erred in charging the jury in the words following, to wit: "Is it probable that he would at a time when pressed for means *voluntarily* make such a deposit of collaterals, and especially as he would have to break his faith with Scheppers Brothers, by thus applying their property to his own use?"

Wherefore the plaintiffs in error aforesaid, the Corn Exchange National Bank above named, say there is error in the judgment aforesaid and the record thereof, and humbly pray your honors that the said judgment may be reversed and set aside, and that a venire facias de novo may be awarded in this cause.

NATHAN H. SHARPLESS,
JOHN C. BULLITT,
Of Counsel with Plaintiff in Error.

AUGUST 1st, 1881.

(Endorsed:) October term 1881; Supreme Court of the United States; The Corn Exchange National Bank *vs.* Emile Scheppers and Edouard Scheppers, sued with, &c.; assignments of error & prayer for reversal; Sharpless, Bullitt.

(Endorsed on cover:) E. Pennsylvania, C. C. U. S.; No. 281; The Corn Exchange National Bank, plaintiff in error, *vs.* Emile Scheppers, Francois Scheppers and Edouard Scheppers, copartners trading as Scheppers Brothers; filed 27th August, 1881; 158 pages.

Supreme court of the United States, October term, 1883.

The Corn Exchange National Bank, plaintiff in error,
vs.
Emile Scheppers et al. } No. 281.

Writ of Certiorari and Return.—Filed February 15, 1884.

1 THE UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the judges of the circuit court of the United States for the eastern district of Pennsylvania, greeting:

Whereas, in a certain suit in said circuit court, between the Corn Exchange National Bank, plaintiff, and Emile Scheppers, Francois Scheppers, and Edouard Scheppers, copartners, trading as Scheppers Brothers, defendants, which suit was removed to the supreme court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"The transcript returned upon the writ of error therein is incomplete, in this: that the charge to the jury of the learned judge
2 below, as it appears in the bill of exceptions filed, and the particular parts thereof specially excepted to by the plaintiffs in error, are omitted therefrom."

You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find, to the said supreme court of the United States, so that you have the same, together with this writ, before the said supreme court forthwith.

Witness the Honorable Morrison R. Waite, chief justice of the supreme court of the United States, the 9th day of February, A. D. 1884.

[SEAL.] JAMES H. McKENNEY,
Clerk Supreme Court U. S.

3 *Charge of Court.*

The Corn Exchange National Bank
vs.
Scheppers Brothers.

BUTLER, J.—Gentlemen of the jury, the Corn Exchange National Bank (plaintiff) exhibits five promissory notes drawn by Scheppers Brothers (defendants,) to their own order, and regularly endorsed. A *prima facie* case is thus made out against the defendants, so that if nothing more appeared, the plaintiff would be entitled to recover the amount of the notes—*twelve thousand dollars.*

1. [In answer to this case the defendants show that in 1873 they drew a very large number of promissory notes to the order of Benjamin Bullock's Sons, to whom they were delivered, to be used in

purchasing wool for the defendants' use, Bullock's Sons procuring the notes to be discounted and applying the proceeds to such purchases. Subsequently Bullock's Sons, who were transacting business on their own account, also failed, having received a large
4 amount of Scheppers Brothers' paper, which they had not so procured to be discounted, and applied to the purchase of wool, as it was their duty to do.] 1 The failure of Bullock's Sons so embarrassed Scheppers Brothers that they, being unable to meet their engagements, sought an extension of time from their creditors and obtained it. The Corn Exchange Bank, the plaintiff, was found to be the holder of $85,000 of the notes delivered to Bullock's Sons, and the defendants (Scheppers Brothers,) supposing that *all* these notes, 17 in number, which went to make up this sum, had been discounted for their (the defendants') use, (as was intended,) executed new notes to the bank for the *full amount*. The new notes were subsequently extended also, and others taken in their stead, Scheppers Brothers reducing the indebtedness by payment as rapidly as they were able to do.

2. [In the settlement of Bullock's Sons' estate it was discovered that *two of the seventeen notes held* by the Corn Exchange Bank, which Scheppers Brothers had renewed on the extension
5 granted them, *had not been discounted by* the bank, and the proceeds applied to the defendants' use, as they supposed when the renewals were executed.] 2 Subsequently Scheppers Brothers paid to the plaintiff all the indebtedness referred to, except the five notes here sued upon, which represent the amount embraced in the two notes not discounted.

Thus far there is no dispute about the facts; nor is there any dispute about the law applicable to them. 3. [Bullock's Sons had no right to use the notes received from Scheppers Brothers for any other purpose than the purchase of wool or to procure them to be discounted, so that the proceeds might be applied to their object.] 3 Nevertheless the notes were so drawn as to constitute commercial or negotiable paper, so that 4. [if Bullock's Sons, in disregard of their duty, transferred them to another for their (Bullock's Sons') own use, the transferee, having no notice of the fraud, would possess a good title, and could recover upon the notes.] 4 If, therefore, Bullock's Sons
6 transferred the two notes before referred to the Corn Exchange Bank in the course of their business with it, the bank thus acquired title, and may recover upon them. Being in the bank's possession, properly endorsed, the presumption is that the notes were so transferred to it in the course of business; and if the case rested here the plaintiff would still be entitled to your verdict.

The defendants (Scheppers Brothers) allege, however, and have undertaken to prove, that the notes were not so transferred to the bank, but were taken possession of by it without warrant or authority; in other words, that Joseph Bullock left an envelope containing them with the cashier, to be retained until called for, and that the notes were improperly extracted and applied to the plaintiff's

use. If this allegation is true the fact constitutes a complete defence. In such case the bank had no right to the notes, and cannot recover upon those in suit which represent them.

Thus we reach the only question in the case. Did the bank
7 acquire possession of the two notes in the manner alleged by the defendants?

The burden of proof is on the defendants. They must satisfy you that their allegation is true, or the defence fails. The plaintiff must be allowed the benefit of the presumption arising from its possession of the notes, and until it is overborne by proof nothing more than this presumption is required to sustain the right to recover.

To satisfy you of the truth of their allegation, the defendants point to the testimony of Joseph Bullock, who says in substance that he was in the habit, just preceding the failure of their firm, of carrying commercial paper about with him in an envelope endorsed, with a view to borrowing or raising money wherever it could be obtained; that he would occasionally leave the envelope with the cashier of the bank over night, and sometimes longer, for safe-keeping. That on Thursday, as he thinks, before the failure of Bullock's Sons, he left this envelope with the cashier in pursuance of his habit, with
8 request to take care of it for him until called for; that on Friday he became discouraged respecting the firm's affairs and called on counsel, when a suspension was resolved upon, and on Monday their failure was announced; that he never called for the envelope left at the bank, or saw it after Thursday; that it contained a miscellaneous lot of paper; some of it might have been Scheppers Brothers'; he cannot recollect; it is his impression some of it was. He further says the only loan they obtained from the bank on which collaterals were given was a call loan of $50,000 in April, 1873; that collaterals were given for this loan when it was made, but none afterwards, so far as he can remember.

[The notes of Scheppers Brothers in controversy, it will be remembered, are of a much later date than this loan, and could not have been left as collateral when the loan was made.]

To answer the defendants' allegation and the testimony produced to support it, the plaintiff called Mr. Schetky, its cashier, who tes-
9 tified that on the day of Jay Cooke's failure, September 17, '73, Joseph Bullock came to the bank, took off his hat and drew a number of notes from it—you will observe that his testimony is very circumstantial—including the Scheppers Brothers' notes in controversy, which he handed to the witness with the remark, "Put these with the rest of my collaterals;" that, turning them over and seeing they were not endorsed, he handed them back for endorsement; that Mr. Bullock endorsed them, and the witness then gave them to the discount clerk to take care of; that an entry was made of them, and they have remained in the bank ever since.

Mr. Marshall, the discount clerk, and Mr. Noblett, the president, were also called, but the former only knows that he received the notes from the cashier and entered them, and the latter that he saw

them in the bank about this time. They do not know where or how Mr. Schetky got them.

Mr. Schetky having thus testified that the notes were given him to hold as collateral for the call loan of $50,000, the defend-
10 ants recalled Joseph Bullock, who says Mr. Schetky is mistaken; that he, Mr. Bullock, did not give him collaterals on the $50,000 call loan at or about the time of Jay Cooke's failure, or at any time after it was obtained; that he was never requested to do so; that he was in the habit of delivering Mr. Schetky paper in an envelope to hold until such time as he would call for it, but never as collateral; that he did not give them these notes as collaterals, as Mr. Schetky had stated.

Thus it is seen that the testimony of Mr. Bullock and Mr. Schetky is in direct conflict, and the question involved in the case depends mainly upon the credit which you shall attach to what one or the other of these witnesses says. The claim and right of the bank as set up rests on a receipt of the notes from Joseph Bullock as collateral security for the $50,000 loan. Joseph Bullock testifies that the bank did not so receive them, while Mr. Schetky testifies that it did.

Which of these witnesses will you believe? If you find them
11 entitled to equal credit, nothing tending to show dishonesty or mistake in either, the decision should be with the plaintiff, who can stand on his possession of the paper, the burden of proof respecting the question raised being on the defendant, as before said. Mr. Bullock does not seem to have any connection with the case which should bias him, nor is his credibility or fairness directly attacked, except by the testimony of Mr. Schetky. Mr. Schetky has no direct interest in the result of the suit. Whether his connection with the plaintiff is likely to bias him you must judge.

Comment has been made by counsel of the entry of the notes in the books of the bank, and on the fact that a part of the notes entered as received from Mr. Bullock, with the two in question, were not received by Mr. Bullock until several days later than the date of the entry. You must determine what weight these circumstances should have in ascertaining the credit to be accorded to Mr. Schetky's testimony. You will be slow to find that either of the witnesses has committed perjury. In the absence of adequate
12 motive appearing for such a crime, it should not be imputed to any one without evidence clearly requiring it. Do you see any motive calculated to lead either of these witnesses into such folly and wickedness? Is one or the other of them honestly mistaken? If so, which? Mr. Bullock says, as before stated, that he left the notes in an envelope with the cashier, to be kept for him until called for. You see the difference between the statement of the witnesses—how slight, and yet how important. Mr. Schetky says the notes, alone, were handed to him with direction to put them "with the rest of" Mr. Bullock's collaterals. Can this testimony be reconciled upon the hypothesis of misunderstanding or forgetfulness? Is there anything in the surrounding circumstances calculated to render one

of these statements more probable than the other? You have heard the views of counsel respecting this. If Mr. Bullock was in great need of money, [and he confesses he was,] when he left the paper, [for which he did not return,] why did he leave it? Why did
13 he not get it again? But in considering this it must be remembered that 5. [he had no right to use the two notes in question for his own benefit; he held them simply as agent or commission merchant to employ them or their proceeds for the defendant's use.] 5 Still there is reason to believe Bullock's Sons did apply a large amount of this paper to their own use. How far the other notes said to be in the envelope were available for raising money we do not know. On the other hand, why should he have placed the paper in Mr. Schetky's hands as collateral for the $50,000 loan? He does not appear to have been asked for collaterals. Mr. Schetky says he was not. 6. [Is it probable that he would at any time when pressed for means voluntarily make such a deposit of collaterals; and especially as he would have to break his faith with Scheppers Brothers, by thus applying their property to his own use?] 6 I do not suggest that it is or is not probable that he would do this, but simply submit the consideration to you, as one that properly arises in passing upon
14 the question involved.

In conclusion, if you find that the defence set up is sustained by the proof—that is to say, that the plaintiff got the two notes in question, as alleged by the defendants—your verdict will be in the defendants' favor; otherwise it will be for the plaintiff in $12,000.

15 And thereupon the counsel for the said plaintiffs did then and there except to so much and such portions of the aforesaid charge and opinion of the said court as appear between [ ] and numbered 1 1, 2 2, 3 3, 4 4, 5 5, and 6 6; and inasmuch as the said charge and opinion so excepted to do not appear upon the record—

The said counsel for the said plaintiffs did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge, at the request of the said counsel for the plaintiffs, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 26th day of April, A. D. 1881.

[L. S.] WM. BUTLER.

16 The Corn Exchange National Bank, plaintiff in error,
vs.
Scheppers et al., defendants in error.

In obedience to the writ of certiorari hereto annexed, issued out of the supreme court of the United States on the 9th day of February, A. D. 1884, the annexed transcript of the charge to the jury in the

In the Supreme Court of the United States.

October Term, 1883. *No.* 281.

THE CORN EXCHANGE NATIONAL BANK, Plaintiffs in Error and below,

vs.

EMILE SCHEPPERS and EDOUARD SCHEPPERS, sued with FRANCOIS SCHEPPERS, co-partners, trading as SCHEPPERS BROTHERS.

BRIEF OF ARGUMENT FOR PLAINTIFFS IN ERROR.

Note.—The references to the record as certified in the original transcript as follows, R. p. , and to that brought up on the writ of certiorari sur suggestion of diminution, C. R., p.

STATEMENT OF THE CASE.

The firm of Benjamin Bullock's Sons largely engaged in the purchase and sale of wool on their own account, and on commission, failed on the 27th of September, 1873. The plaintiffs below at that time held seventeen promissory notes of $5000 each, in the aggregate amounting to $85,000, of the defendants Scheppers Brothers, endorsed by Benjamin Bullock's Sons.

In December, 1873, the defendants applied to the plain-

tiffs for an extension upon this $85,000 of paper, which was granted, and upon this extended paper coming due in 1875, it was at the defendants' request again extended, and the five promissory notes upon which this suit is brought amounting in the aggregate to $12,000 (copies of which appear in the record pp. 3, 4), represent the balance remaining unpaid of the debt in the original notes of $85,000 aforesaid. Upon the case coming on for trial, the plaintiffs gave in evidence the five promissory notes, produced some coupon bonds which they held as collateral, and rested.

The allegation of the defendants which they sought to establish by proof was, that while they admitted that fifteen of their $5000 notes which the plaintiffs held at the time of the failure of Benjamin Bullock's Sons had been properly discounted by the bank, they asserted that as to the two remaining ones of $5000 each, they had given them to Benjamin Bullock's Sons in pursuance of two written contracts (R. pp. 24, 25), to purchase wool for the defendants, that the said two notes had not been used for that purpose by Benjamin Bullock's Sons, or in fact, for any other purpose, but that a member of the last named firm had merely left said two notes in an envelope at the plaintiffs' banking house, that the plaintiffs had improperly appropriated them to their own use, and that this was unknown to the defendants at the time of their procuring their two extensions from the said plaintiffs upon the notes aforesaid.

The case therefore turned upon two questions of fact:

1st. What were the rights of Benjamin Bullock's Sons, as between themselves and the defendants, to the two promissory notes in question? and 2d. What rights had the plaintiffs acquired to said paper as between themselves and Benjamin Bullock's Sons? As to the second of these

questions, there was evidence on both sides; upon the one hand to support the defendants' allegation aforesaid as to the manner in which these two $5000 notes had come into the hands of the plaintiffs, and upon the other the officers of the bank testified that the two notes in question had been received by them from Benjamin Bullock's Sons as additional collateral for a call loan of $50,000, theretofore made by them to that firm, some $25,000 of which still remains unpaid. This question was left as one of fact to the jury, and there is no complaint as to the instructions of the court in regard to it, other than as it is involved in the consideration of the other question aforesaid.

But matters are widely different in regard to the first point, to wit: as to what were the rights of Benjamin Bullock's Sons as between themselves and the defendants in these two $5000 promissory notes. The defendants undoubtedly testify in a general way that those two notes were given to Benjamin Bullock's Sons to buy wool with and that they did not get the wool to the amount of all the promissory notes they gave, (R. pp. 25, 35), but it also very clearly appeared in the defendants' case that in addition to the promissary notes given by them to Benjamin Bullock's Sons for the purchase of wool they also loaned them their accomodation paper to a very large amount, and further that the defendants took receipts from Benjamin Bullock's Sons for the commercial paper which they delivered to them specifying the purpose for which it was to be used, and these receipts the defendants themselves gave in evidence, (R. pp. 26, 27), and when the defendant, Edouard Scheppers, who appears to have been the one most familiar personally with these transactions, is pressed by his own counsel (R. foot p. 29), and upon cross-examination (R. p. 30), to designate the receipt which covers the two

notes in question, he names the one of August 1st, 1873 (R. foot p. 27), for thirty promissory notes of $5000 each, and his correctness in this is reduced to a reasonable certainty in the examination of the book keeper of Benjamin Bullock's Sons (R. middle and foot of p. 46), showing that two of the notes originally held by the plaintiffs, which the time of their maturity shows must of necessity have been included in the receipt of August 1st, 1873, were never discounted for the benefit of Benjamin Bullock's Sons; now this receipt of August 1st, 1873 (R. foot p. 27), is apparently plain upon its face for notes to be used by Benjamin Bullock's Sons for the purchase of wool, or at their option for their own accommodation, and when the defendant Edouard Scheppers is pressed by his own counsel, (R. p. 28), as to any verbal understanding between Benjamin Bullock's Sons and the defendants at the time varying the terms of this receipt, his testimony is remarkably vague and insufficient for the purpose, and this will not appear so surprising when we read (R. top p. 30), that this defendant is not sure whether himself, his brother, or the book keeper transacted the business. The matter then appears to come down to this, if the question is to be determined upon the terms of the receipt which Benjamin Bullock's Sons gave the defendants for these two promissary notes at the time they were received, as a matter of law, Benjamin Bullock's Sons had a right under it to pledge them to the plaintiffs for an antecedent debt; if the writing was to be affected by this loose and uncertain parol evidence the result would be a question of fact for the jury. But the learned judge in those passages of his charge complained of in the six assignments of error manifestly took this question from them and ruled it himself. To verify this assertion without going through the charge and pointing to each assignment of error, it is sufficient to refer to the third

exception (C. R. p. 2, middle of page), third assignment of error (R. p. 69), where we find this language of the learned judge, "Bullock's Sons had *no right* to use the notes received from Scheppers' Bros., *for any other purpose than the purchase of wool*, or to procure them to be discounted, so that the proceeds might be applied to this object."

ASSIGNMENT OF ERROR.

1. The learned judge who tried the cause below erred in charging the jury in the words following, to wit: "In answer to this case, the defendants show that in 1873, they drew a very large number of promissory notes to the order of Benjamin Bullock's Sons, to whom they were delivered, to be used in purchasing wool for defendants' use. Bullock's Sons procuring the notes to be discounted and applying the proceeds to such purchases. Subsequently Bullock's Sons who were transacting business on their own account also failed, having received a large amount of Scheppers Brothers' paper which they had not so procured to be discounted, and applied to the purchase of wool, as it was their duty to do."

2. The same learned judge also erred in charging the jury in the words following, to wit: "In the settlement of Bullock's Sons' estate it was discovered that *two of the seventeen notes held by* the Corn Exchange Bank, which Scheppers Brothers had renewed on the extension granted them, *had not been discounted by* the bank, and the proceeds applied to the defendants' use, as they supposed when the renewals were executed."

3. The same learned judge also erred in charging the jury in the words following, to wit: "Bullock's Sons had *no*

right to use the notes received from Scheppers Brothers *for any other purpose than the purchase of wool*, or to procure them to be discounted so that the proceeds might be applied to this object."

4. The same learned judge also erred in charging the jury in the words following, to wit: "If Bullock's Sons in disregard of their duty transferred them to another for their [Bullock's Sons] own use, the transferree having no notice of the fraud, would possess a good title and could recover upon the notes."

5. The same learned judge also erred in charging the jury in the words following, to wit: "He," [meaning the witness, Joseph W. Bullock], "had no right to use the two notes in question for his own benefit: he held them simply as agent or commission merchant to employ them or their proceeds for the *defendants' use.*"

6. The same learned judge also erred in charging the jury in the words following, to wit: "Is it probable that he would at a time when pressed for means, *voluntarily* make such a deposit of collaterals; and especially as he would have to break his faith with Scheppers Brothers, by thus applying their property to his own use?"

Wherefore the plaintiffs in error aforesaid, the Corn Exchange National Bank, above named, say there is error in the judgment aforesaid, and the record thereof, and humbly pray your Honors that the said judgment may be reversed and set aside, and that a *venire facias de novo* may be awarded in this cause.

NATHAN H. SHARPLESS.
JOHN C. BULLITT.
Of Counsel with Plaintiffs in Error.

BRIEF OF ARGUMENT.

It would be ludicrous if not impertinent to make a parade of authority and argument to this court on the question of the respective functions of the court and the jury in passing upon simple questions of fact in the course of an ordinary jury trial. The question of fact arose on the trial of this cause as to whether the defendants had delivered two of their promissary notes of $5000 each to Benjamin Bullock's Sons, for a specific purpose, which the latter firm could only fraudulently disregard, or whether they were so delivered to Benjamin Bullock's Sons to be used at their option, for their own accommodation. This question was important, because the only claim of the plaintiffs upon these promissary notes was that Benjamin Bullock's Sons had delivered them to them long before their maturity as an additional collateral security for a pre-existing debt. If the paper was accommodation paper Benjamin Bullock's Sons had a right to pledge it to the plaintiffs for a pre-existing debt; they had, of course, no such right if they were issuing the paper in fraud of the defendants' rights.

The rule in Pennsylvania is very clear upon this subject. In Lord *vs.* The Ocean Bank, 20 Pennsylvania State Rep., p. 384, the late Chief Justice Black states our doctrine upon the subject as follows, p. 386:

"But the maker of an accommodation note cannot set up the want of consideration as a defence against it in the hands of a third person, though it be there on collateral security merely. He who chooses to put himself in the front of a negotiable instrument for the benefit of his friend, must abide the consequence (12 Ser. & R. 382), and has no more right to complain if his friend accommodates himself by pledging it for an old debt, than

if he had used it in any other way. * * * * Accommodation paper is a loan of the maker's credit without restriction as to the manner of its use."

Upon the trial below it was the case for them made by the defendants' witnesses that the two notes in controversy were given by them under the receipt of Benjamin Bullock's Sons, of August 1st, 1873 (R. foot, p. 27), the concluding words of which are "for purchase of wool, or to be protected by us at maturity;" there was nothing to controvert the terms of this receipt except vague allegation that the notes were given "to purchase wool," and even this was qualified by the principal witness on the point again prudently referring himself to the receipt (R. p. 28).

It is respectfully submitted that upon this the learned judge below should either have told the jury that by the plain terms of the receipt given for them, the notes in question, at the option of Benjamin Bullocks' Sons were accommodation paper which they had the right to pledge to the plaintiffs, or at all events have left the question to the jury upon the writing with very conservative instructions as to the right which the loose and uncertain evidence gave them to vary from it, instead of apparently ignoring the receipt, and upon the parol evidence, whatever it may or may not have been worth, positively instructing the jury that Benjamin Bullocks' Sons had no right to pledge the paper to the plaintiffs.

NATHAN H. SHARPLESS.
JOHN C. BULLITT.
Of Counsel with Plaintiffs in Error.

111-440

No. 281. *October Term, 1883.*

Supreme Court of the United States.

The Corn Exchange National Bank,
Plaintiff in Error and Below,

vs.

Emile Scheppers and Edouard Scheppers, sued with François Scheppers, Copartners, &c.,
Defendants in Error and Below.

Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

BRIEF OF ARGUMENT FOR DEFENDANTS IN ERROR.

FRANCIS D. LEWIS,
CHAS. E. MORGAN, JR.,
JOHN G. JOHNSON,
For Defendants in Error.

Allen, Lane & Scott, Printers, 229-231 South Fifth Street, Philadelphia.

Supreme Court of the United States.

The Corn Exchange National Bank, Plaintiff in Error,

vs.

Emile Scheppers and Edouard Scheppers, sued with François Scheppers, Copartners, &c.

October Term, 1883.

No. 281.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF OF ARGUMENT FOR DEFENDANTS IN ERROR.

The single issue raised by the pleading and evidence, and the only question presented to the jury for their determination, was whether the bank rightfully became possessed of the two notes, renewals of which were sued upon below. The contention of the defendants, upon whom was the burden of proof, was that Joseph W. Bullock, a director of the plaintiff bank, a day or two before the failure of his firm of Benjamin Bullock's Sons, left these two notes, with other commercial paper, at the bank as a mere depository for safe keeping, to be retained until called for by him, and that no other disposition of the paper was ever made by said firm. The plaintiff, on the other hand, contended that Mr. Bullock left the notes as collateral security for a call loan of $50,000, made about five months previously by the bank to Benjamin Bullock's Sons.

The learned judge instructed the jury that the burden of proof was upon the defendants, and unless the defense referred to should be sustained by the proof, the verdict should be for the plaintiff.

It is true that in his summary of the evidence, among other considerations pointed out as bearing upon the question submitted to the jury, he reminded them of the fact clearly established by the evidence, that the originals of the notes in suit were given by the defendants, Messrs. Scheppers Brothers, to Benjamin Bullock's Sons, to be converted into money, and the proceeds used by the latter in the purchase of wool for the former upon commission; and that any such disposition of the said notes as that alleged by the plaintiff, to have been made by Joseph W. Bullock, would have been a fraudulent misappropriation of them. The question was left to them, whether Mr. Bullock would have been likely voluntarily to do this. (See Judge's charge, R. page 17.) "On the other hand, why "should he have placed the paper in Mr. Schetky's hands as "collateral for the $50,000 dollar loan. He does not appear to "have been asked for collaterals. Mr. Schetky says he was not. "Is it possible that he would, at a time when he was pressed for "means, voluntarily make such a deposit of collaterals, as espe- "cially he would have to break his faith with Scheppers Broth- "ers, by thus applying their property to his own use? I do "not suggest that it is or is not probable that he would do this, "but simply submit the consideration to you, as one that properly "arises, in passing upon the question involved."

All the assignments of error, six in number, are addressed to this feature of the charge, which appears in the several portions thereof inclosed in brackets.

We submit that the court did not err in thus instructing the jury, and that upon the uncontradicted and unimpeached evidence for the defendants, it was its duty to advert to and suggest to the jury for their consideration in weighing the evidence, the fact conclusively proven, that the originals of these notes were given by the defendants to Benjamin Bullock's Sons, expressly and solely to be turned into money to be used by them for the defendants, for the purchase of wool on

commission, and that the use alleged by the plaintiffs to have been made of said paper by Benjamin Bullock's Sons, would have been wholly unauthorized and a fraud upon the defendants.

The contracts under which these notes were given, are upon pages 24 and 25 of the Record, and are dated respectively May 29th, 1873, and July 3d, 1873. The former provides for the purchase by Benjamin Bullock's Sons for Scheppers Brothers of three hundred thousand of pounds of wool in Pennsylvania and Ohio, at certain prices therein specified, for a commission of five per cent., Scheppers Brothers to issue their notes to Benjamin Bullock's Sons, "from time to time as you (Benjamin Bullock's "Sons) may require, and at such dates as we can mutually "agree on; said paper to be converted into money for our ac- "count at the market rate." The contract is signed by Scheppers Brothers, and accepted in writing by Benjamin Bullock's Sons. The latter agreement was made July 3d, 1873, and provides for the purchase of five hundred thousand pounds in addition to the three hundred thousand pounds provided for in the contract of May 29th, and upon the same terms and conditions.

In accordance with these contracts the defendants issued from time to time to Benjamin Bullock's Sons their promissory notes for the purchase of the eight hundred thousand pounds referred to in the agreements, and for such other additional wool as they expected to require.

There were issued for the purchase of wool on commission notes amounting in the aggregate to $510,000, and at the date of the suspension of Benjamin Bullock's Sons there was a large balance on the wool account in favor of Scheppers Brothers.

In addition to these, there were two other transactions between Benjamin Bullock's Sons and Scheppers Brothers, each of which was entirely distinct from the purchase of wool on commission. There was an issue of accommodation paper amounting to $100,000, by Scheppers Brothers to Benjamin Bullock's Sons—twenty notes for $5000 each—the last of which matured October 27th, 1873. (See receipt of June 23d, 1873, R. page 26); and there were also purchases of wool, not on commission, but directly by the defendants from Benjamin Bullock's Sons, amounting in the aggregate to $98,896.16, for which Scheppers Brothers gave their

notes. See receipts dated respectively July 23d, 1873, and September 3d, 1873 (R. pages 27 and 28).

Neither of the notes in question, maturing respectively February 11/14, 1874, and February 25/28, 1874, was included in either of these last two classes of paper. This is made evident by a comparison of the dates of maturity of these two notes with those of the accommodation notes (see receipts dated June 23d, 1873, R. page 26), and of those given for wool purchased of the Bullocks themselves (see receipts dated July 23d, 1873, and September 3d, 1873, aggregating $98,896.16.) (Record pages 27 and 28).

It is thus clearly shown by the contracts and the receipts that the two notes in question were given under the said contract for the purchase of wool, and were to be discounted and their proceeds applied to that purpose.

This fact is also proven by the testimony of defendants' witnesses, Edward Scheppers and Thomas Sinexon.

Mr. Scheppers, one of the defendants, testified as follows :—

"Q. Under what contract was any wool bought, and if so state "how much and how the wool was paid for?

"A. There was bought under that contract eight hundred thou- "sand pounds of wool, and we gave for the buying of the wool "notes to be discounted for our account.

"Q. To what extent?

"A. $510,000.

"Q. What would eight hundred thousand pounds of wool cost?

"A. It would cost about $425,000, with interest and commis- "sion.

"Q. What would the difference be for?

"A. The difference was to buy more wool.

(R., page 25.)

When questioned with reference to the accommodation notes (page 26) as follows :—

"Q. Are they all paid or not at the present time?" He answered :—

"A. They were paid. They were twenty in number."

And further with reference to the notes included in the receipts dated August 1st, 1873, viz.:—

"Q. The last of these receipts is dated August 1st, 1873, and "is for thirty notes of $5000 each. Was anything said at the "time those notes were given, on what account they were given?

"A. It was understood for wool purchased.

"(Objected to.)

"Q. What was said?

"A. The receipt says, that those notes are given—

"Q. I don't mean what the receipt says, but what was said "between you people in giving those notes.

"A. For the purchase of wool.

* * * * * * *

"Q. What was said when he asked you for those notes, and "when you gave them, and why you gave them, and what was "to be done with them? I refer to the thirty notes.

"A. I gave those notes for the purchase of wool, and for no "other purpose."

Mr. Sinexon, book-keeper in the employ of Benjamin Bullock' Sons (R. page 44, *et seq.*), testified on cross-examination, *inter alia*, as follows:—

"Q. Can you say with certainty to what batch of notes those "seventeen belong?

"A. I can if you will allow me to get my day-book and ledger.

"Q. Are they a part of the $100,000 of accommodation "paper, or some of the business notes referred to here?

"A. I can say in answer to your question, there are twenty "notes received on June 24th, according to my book, each for "$5000.

"(Receipt produced and shown witness.)

"Q. Is that the receipt for them; it is dated June 23d?

"A. These notes for which the receipt was given June 23d, "received on the 24th, is paper which we borrowed of them for "our accommodation.

"Q. Are these the notes mentioned? I refer to the seventeen "original notes held by the bank.

"A. Not at all.

"Q. What you have said is, that this is a receipt for twenty "notes borrowed for their accommodation. I now hand you "seventeen notes, and ask you whether they are or are not in "this receipt?

"A. No, sir; there is no question about that.

"Q. What I want to get at is, under what contract Benjamin "Bullock's sons got those seventeen notes?

"A. It was a contract for about eight hundred thousand "pounds of wool renewed. Neither was fully complete. I have "forgotten the figures; one was for five hundred thousand, and "the other for three hundred thousand; or one was for three "hundred thousand, and the other for five hundred thousand; "but whatever it was, neither contract was complete, and these "notes came under that contract.

"Q. They were given in the fulfillment of your part of the "contract?

"A. They were given in fulfillment of Scheppers' part of the "contract."

"Q. According to the contract the Scheppers were to give "you the notes, and you were to furnish the wool?

"A. Yes, sir.

"Q. Then it was a business paper between Scheppers Broth-"ers and them?

"A. Yes, sir; as I have said, we received these seventeen "notes under the contract for buying wool."

He again testified (R., pages 46, 47) that said notes were unquestionably given for the purchase of wool, and were never discounted by Benjamin Bullock's sons.

There was no evidence whatever tending to prove that said notes were not given for the purchase of wool, or in any manner controverting that of the defendants upon this point. In his brief of argument, the counsel for the plaintiff places his case altogether upon the written receipt given by Benjamin Bullock's Sons for these two notes among others. See R. page 7.

"Received Philada., Aug 1st, 1873, of Scheppers Bros. their "thirty promissory notes each for $3000 maturing as follows: "1 Jan'y 2/5, 1 Jan'y 5/8, 1 Jan'y 7/10, 1 Jan'y 14/17, 1 Jan'y

"18/21, 1 Jan'y 21/24, 1 Jan'y 25/28, 2 Jan'y 18/31, 2 Feby
"4/7, 2 Feby 8/11, 2 Feby 11/14, 3 Feby 15/18, 2 Feby 18/21,
"3 Feby 22/25, 4 Feby 25/28, aggregating in amount $150,000,
" for purchase of wool, or to be protected by us at maturity.

" (Signed)

" BENJAMIN BULLOCK'S SONS."

The language particularly relied upon is the following at the close of the receipt, viz., " or to be protected by us at maturity," and it is argued that " the learned judge below should either " have told the jury that by the plain terms of the receipt given " for them, the notes in question, at the option of Benjamin " Bullock's Sons, were accommodation paper which they had the " right to pledge to the plaintiffs, or at all events have left the " question to the jury," &c.

See Plaintiffs' Brief, page 8.

An examination of the evidence will show that the construction of this receipt thus contended for, is entirely repugnant to the evidence, oral and documentary, in the suit, and that there is no inconsistency between the receipt and the testimony of the defendants, all of which is flatly to the effect that these two notes were given solely for the purpose of enabling Benjamin Bullock's Sons to purchase wool on commission for the defendants, and that it was not the intention of either party that the paper should be used for any other purpose.

The receipt, which is not the contract under which the notes were given, but merely a part of the evidence, showing the character of the transaction, is to be taken in connection with the other evidence in the case, and if at all ambiguous is to be explained thereby.

See Russell *vs.* The Church, 65 Penn'a St., 9;
Harden *vs.* Gordon, 2 Mason, 541.

The plain intent of the parties was as stated by both Mr. Scheppers and Mr. Bullock, that the notes were to be discounted by the Bullocks and the proceeds held by them to be used to buy wool for Scheppers Brothers as the latter required it; and in case the quantity of wool required by Scheppers Brothers should not exhaust the funds thus provided and held by Benja-

min Bullock's Sons, the surplus was to be used to meet the notes given in excess of wool delivered. In other words, the notes were to be turned into cash by Benjamin Bullock's Sons, and the cash was to be used either to pay for wool, or to meet the notes at their maturity.

The transactions were intended for the benefit of Scheppers Brothers in one or the other of these two methods, and not to accommodate Benjamin Bullock's Sons; and the diversion of either the paper itself or its proceeds by the latter, for their own benefit, was not contemplated by either party, and would have been a fraud upon Scheppers Brothers.

The court, in presenting to the jury the question whether Bullock's Sons had, as alleged by the plaintiff, transferred said notes to it as collateral for the existing loan of $50,000, very properly reminded them that such a transfer would have been a misappropriation of the paper, and a fraud on Scheppers Brothers, and instructed them that they should consider this fact in weighing the evidence and reaching a conclusion.

The argument of the plaintiff in error if sound as to these two notes, is equally so as all thirty notes referred in said receipt of August 1st, 1873. If these are to be treated as accommodation paper, so must the entire issue of $150,000 be regarded, and Benjamin Bullock's Sons would have been justified in using the whole issue exclusively for their accommodation, making any disposition thereof that their necessities required.

We contend, however, that all the evidence in the case, uncontradicted as it is, the contracts, the receipts, and the testimony of the defendants, their book-keeper Mr. Bromm, Joseph W. Bullock, and the book-keeper of Benjamin Bullock's Sons, Thomas Sinexon is harmonious, and that it all points clearly and unmistakably to the conclusion reached by the learned judge, that all the notes given, except the two classes referred to, which were the one for the accommodation of Benjamin Bullock's Sons, $100,000, and the other for wool purchased directly by the defendants from them, $98,896.16, were given for the *benefit of the defendants*, and were to be used either to buy wool for them, as it should be required by them, or to meet the discounted paper as it matured.

It is well settled that where, in the trial of a suit, a fact is not only well proven, but is uncontested, it is proper for the court in summing up to a jury to assume it as a basis for the instructions to be given to them.

It is not the duty of a judge to go through the idle ceremony of submitting to a jury testimony relied upon by a party to the suit, which is uncontradicted and unimpeached, and which clearly establishes a fact which is an element in the case. Under such circumstances the effect of the testimony, that, is the *fact* thus proved, should be stated by the court, and a new trial resulting from a verdict clearly erroneous avoided.

United States *vs.* Nason, 1 Gallison, 53;
McLanahan *vs.* Universal Ins. Co., 1 Peters, 182;
Games *vs.* Stiles, 14 Peters, 322;
Mitchell *vs.* Harmony, 13 Howard, 115;
Improvement Co. *vs.* Munson, 14 Wallace, 448;
Pleasants *vs.* Fant, 22 Wallace, 116;
Herbert *vs.* Butler, 7 Otto, 319;
Orleans *vs.* Platt, 9 Otto, 676.

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